

ROYAL COMMISSION INTO INSTITUTIONAL
RESPONSES TO CHILD SEXUAL ABUSE

Public Hearing - Case Study 44
(Day 210)

Level 17, Governor Macquarie Tower
1 Farrer Place, Sydney

On Thursday, 15 September 2016 at 10am

Before:

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

Counsel Assisting: Ms Gail Furness SC

1 MR AINSWORTH: Could I announce my appearance. My name
2 is Ainsworth, I appear for former Bishop Heather in
3 relation to the matters arising out of the former Society
4 of St Gerard Majella.

5
6 THE CHAIR: Very well. Thank you, you have leave.

7
8 <BEDE VINCENT HEATHER, on former oath: [10.05am]

9
10 <EXAMINATION BY MS FURNESS CONTINUING:

11
12 MS FURNESS: Q. Bishop, when we adjourned, I was asking
13 you questions about Father Farrell's time in Kenthurst?

14 A. Yes.

15
16 Q. Can I ask for document 88 to be on the screen. This
17 is 27 June 1990. Do you see those who were present at the
18 meeting? Who was D Arcamone?

19 A. Father Dominic Arcamone was the parish priest of
20 Westmead at this time, I think. Later on he became the
21 Vicar General of the diocese but at this time he would have
22 been the parish priest of Westmead.

23
24 Q. At these meetings of the Consultors, on page 2,
25 there's reference at the bottom of the page to
26 Father Farrell, and it notes that he had been at Kenthurst
27 since last October - so that would be October 1989 - and he
28 had come to see you to say his psychologist had advised him
29 he shouldn't continue at Kenthurst. Do you remember what
30 that was about?

31 A. I could only give a general impression that it was
32 about some personality clash between himself and
33 Father Dixon.

34
35 Q. Father Dixon being the parish priest?

36 A. Being the parish priest of Kenthurst at the time, yes.

37
38 Q. Could we turn to the next tab, 89. These are the
39 minutes of the meeting in July, the next month. At the top
40 of page 4 there's reference to not being able to resolve
41 the personality difficulty between Father Dixon and
42 Father Farrell, and you raised that he, Farrell, might have
43 the possibility of weekend supply but didn't have anything
44 more for the moment, and then the minutes note that some
45 discussion followed. Was it at that meeting that there was
46 also concern raised by some of the Consultors about
47 Farrell's continuing presence in the diocese?

1 A. I don't think the Consultors were ever really content
2 with his presence in the diocese. As I think I may have
3 said yesterday, he didn't have an engaging personality,
4 didn't make friendships readily among the clergy in the
5 diocese, and there was this criticism within the
6 Consultors, and among others, also, of his presence in the
7 diocese.

8
9 Q. It was also because, wasn't it, that most of them, if
10 not all of them, knew about the charges at Narrabri court?

11 A. They would have, yes. Yes.

12
13 Q. But ultimately, as Bishop, it was your call?

14 A. That's right, yes.

15
16 Q. Turning to tab 91, this is your letter to
17 Father Farrell in August 1990 and it refers in the second
18 paragraph to an agreement between he and Father Dixon that
19 his appointment at Kenthurst would terminate from the end
20 of June and that there was nothing in the meantime
21 available to him and so, effectively, he was no longer with
22 your diocese at that time - is that right - or at the end
23 of June?

24 A. Well, yes, he was more or less in no-man's-land at
25 that stage, I suppose. He was still technically on loan to
26 us from Armidale, but I didn't have any appointment for him
27 at that stage.

28
29 Q. Did he remain living in your diocese?

30 A. He did, yes, yes, and went on to do supply work at
31 Kenthurst.

32
33 Q. Before he ultimately went to Merrylands?

34 A. Yes, that's right. He did some supply work at
35 Kenthurst.

36
37 Q. This would have been an opportunity to effectively
38 send him back to Armidale, wouldn't it?

39 A. Well, the 12 months were not quite up, that I'd
40 undertaken to take him for, and I had no indication from
41 Bishop Kennedy that he was ready to take him back at that
42 stage, so I didn't make any move in that direction.

43
44 Q. Father Chris Dixon, as you would know, gave an
45 interview to Mr Whitlam?

46 A. Yes. Yes.

47

1 Q. His interview can be found at tab 16. Have you seen
2 this before, Bishop?
3 A. No, I haven't seen a transcript of this interview.
4
5 Q. Did Father Dixon talk to you about it after he gave
6 the interview?
7 A. He didn't, no. The only way I knew that he was
8 interviewed was through reading the Whitlam Report.
9
10 Q. I have taken you to parts of this before, but I want
11 to take you to page 8. At the beginning of that page he's
12 referring to Farrell being not amenable to direction or
13 discussion, because, at this stage in the conversation,
14 Father Dixon was the parish priest and Farrell was the
15 assistant priest.
16 A. Yes. Yes.
17
18 Q. In the first answer he gives he says:
19
20 As for reporting anything up the line,
21 I mentioned to Paul Davis ...
22
23 Who was Paul Davis at this time?
24 A. I'm not sure what role - this was 2012 - no, the
25 interview was 2012.
26
27 Q. The interview was 2012. The account he's giving is an
28 account when Farrell was with him at the Parish of
29 Kenthurst, so late 1989 to mid-1990?
30 A. Yes. Well, Paul Davis at that stage didn't have any
31 role in the diocese. I don't know what --
32
33 Q. Was he a member of the clergy?
34 A. No, no.
35
36 Q. A layperson?
37 A. A layperson, yes.
38
39 Q. Then he refers to the story of how a teacher had
40 reported to him that Farrell had made an inappropriate
41 suggestion to her, and then Father Dixon says he reported
42 that to you?
43 A. Yes.
44
45 Q. And he didn't know what you did with that?
46 A. No. I think he reported that Father Farrell had gone
47 into her classroom after school one day, when she was

1 preparing lessons for the next day, and had made a
2 suggestive remark to her. I don't think he ever told me
3 what the remark was.
4

5 Q. I take it you took from that it was sexually
6 suggestive?

7 A. I suppose so, yes, yes, I assumed it was, but --
8

9 Q. Did that cause you to reconsider his presence in your
10 diocese?

11 A. Well, I didn't think that was a matter that would
12 cause me to reconsider it. This was an inappropriate
13 remark made to an adult and, no, I didn't think that was
14 sufficient ground for me to reconsider his position in the
15 diocese.
16

17 Q. Was it put to you it was?

18 A. No. No.
19

20 Q. It wasn't?

21 A. No, it was just mentioned in passing.
22

23 Q. Can I take you to tab 92. This is Farrell's response
24 to you, indicating that he wanted to continue at Kenthurst.
25 Do you see that?

26 A. Yes.
27

28 Q. It is in the middle paragraph?

29 A. I see that, yes.
30

31 Q. He talks about "... discussions in June led to a
32 clearing of the air, and now a most favourable atmosphere
33 prevails." I take it that was in relation to his dealings
34 with Father Dixon?

35 A. I think so, yes.
36

37 Q. Do you remember now whether Father Dixon shared the
38 view that there was a favourable atmosphere prevailing?

39 A. No, I don't think he did and, of course, subsequent
40 events and the Whitlam Report have made me a bit dubious
41 about some of the matters that Father Farrell brought to
42 me.
43

44 Q. He might not have been completely honest in terms of
45 his dealings with others within the diocese?

46 A. That was the suggestion in the Whitlam Report and it
47 may well apply to this item.

1
2 Q. You would now know that Father Usher provided a report
3 to those within the Diocese of Armidale at about this time
4 in relation to Farrell?
5 A. Yes, I do, yes.
6
7 Q. Did you know it at the time?
8 A. No, I didn't know it at the time. I saw that for the
9 first time in the Whitlam Report in 2012.
10
11 Q. So no-one in the Diocese of Armidale sought to advise
12 you of that, notwithstanding that Farrell was working in
13 your diocese at the time?
14 A. That's right, I wasn't advised about that.
15
16 Q. Did you have an expectation at this time that were the
17 Diocese of Armidale to come into any information relevant
18 to Farrell's ability to work as a priest, they'd tell you?
19 A. Let me say simply it would have been very helpful to
20 have had that report at that time.
21
22 Q. There's no question, Bishop it would have been
23 helpful. Did you have an understanding, at least in your
24 mind, that such information - that is, concerning Farrell's
25 appropriateness as a priest - would come to you?
26 A. I presumed that that would happen, yes, especially a
27 report of that nature.
28
29 Q. Did anything come to your attention during the time he
30 was - that is, Farrell was - at Kenthurst from Armidale
31 about any view they had about Farrell?
32 A. No, I don't think I ever learnt all that material
33 until I read the Whitlam Report.
34
35 Q. Let me turn to tab 94. This is a letter from
36 Gerard Hayes to "Wayne", who you can assume is
37 Father Peters. Have you seen this letter before? It is
38 heavily redacted, which makes it difficult to read?
39 A. Yes. I think I may have seen it before, yes.
40
41 Q. In relation to your giving evidence today, or earlier?
42 A. I'm just trying to remember where I may have seen it
43 before. In some of the documentation that has been given
44 to me, I think.
45
46 Q. For the purpose of this hearing?
47 A. Yes.

1
2 Q. You will see, notwithstanding that it is difficult to
3 read, that the gist of it is that Father Peters is being
4 told by - it is Father Hayes, isn't it?
5 A. Yes.
6
7 Q. By Father Hayes that he had a conversation with
8 somebody in Moree that reported an encounter between
9 Farrell and others, whereby Farrell wished to take a number
10 of boys between about 10 and 12 away on a camping trip?
11 A. Right, yes.
12
13 Q. And somebody recognised his name and put a stop to it?
14 A. Yes, I am familiar with that document. I think it may
15 have been through the Whitlam Report that I came to know of
16 that. I hadn't known of it before.
17
18 Q. None of that information came to your attention in
19 around September 1990 or afterwards?
20 A. No, not at all.
21
22 Q. Coming to tab 95, this is a meeting of the Consultors
23 in September 1990. Page 3 refers to Father Farrell. You
24 gave, according to these minutes, details of what had
25 occurred since his appointment at Kenthurst had been
26 terminated?
27 A. Yes.
28
29 Q. What had occurred since his termination, do you recall
30 now? I appreciate it is some time ago?
31 A. Following that previous letter that we looked at from
32 Father Farrell, I was not prepared to agree to his
33 continuing on his appointment at Kenthurst. I suppose this
34 might be an example of a Bishop's consciousness of his
35 office, but I felt in my some way my appointments of him
36 were being manipulated and that other people were deciding
37 appointments rather than the proper authority. So although
38 Father Farrell suggested that now a mutual understanding
39 had been reached and the air had been cleared, I was not
40 prepared to say, "Very well, go on with that appointment."
41 My view was that the appointment had been terminated and
42 that's how I left it.
43
44 Q. You felt manipulated by Farrell?
45 A. Well, I felt, yes, that the whole appointment process
46 was being taken out of my hands.
47

1 Q. And you wanted to put your foot down and assert your
2 authority as Bishop?
3 A. Well, I did, yes, suppose.
4
5 Q. You did that by saying, "No, you can't go back to
6 Kenthurst"?
7 A. Yes, I would not continue the appointment at
8 Kenthurst. He did, however, continue at Kenthurst to
9 supply for some time because Father Dixon, I think, was
10 going on holidays, so he stayed on at Kenthurst to supply.
11
12 Q. You weren't unhappy about that?
13 A. No.
14
15 Q. Because it was a supply appointment only?
16 A. Well, yes, that's right, I was prepared to allow that,
17 yes.
18
19 Q. Could we just turn to tab 96. This, I think, is your
20 letter to Farrell setting out the circumstances.
21 A. Yes.
22
23 Q. Have you seen this letter recently?
24 A. Yes. I think so, yes, I've seen this, yes.
25
26 Q. Perhaps we could scroll up. You were keen to make it
27 clear to him that it wasn't an appointment or renewal of an
28 appointment, it was supply work and that was that?
29 A. Right, yes.
30
31 Q. Could we turn to tab 97. This is a letter from you to
32 "Harry", who I take it was Bishop Kennedy?
33 A. Bishop Kennedy, yes.
34
35 Q. In September 1990. You gave him a copy of the letter
36 I've just taken you to to Farrell?
37 A. Yes, mmm.
38
39 Q. In the second paragraph you say:
40
41 If he requests, with your approval, to stay
42 on here for a further year I shall try to
43 place him. This is not so easy, I find.
44 Those who knew him in the seminary are
45 reluctant, not realising perhaps that he
46 has changed much in the meantime. Also, my
47 Consultors impress on me the importance of

1 his returning to his own diocese ...

2

3 Can you help with us what you knew at that time of those
4 who were in the seminary with him and what they thought?

5 A. I can't really recall that, no. He did have fellow
6 seminaries, obviously, but I can't remember which of them
7 spoke to me, either directly or indirectly. I just don't
8 recall that now.

9

10 Q. But by now you had a number of people being concerned
11 about him?

12 A. Yes, I did, yes.

13

14 Q. You had the Consultors, for a variety of reasons,
15 including personality, their knowledge of what had happened
16 at Moree, and now some people remembering him from the
17 seminary?

18 A. Yes.

19

20 Q. You also had Father Dixon telling you of that episode
21 in relation to the woman and suggestive remarks being made?

22 A. Yes.

23

24 Q. It was adding up, wasn't it, Bishop?

25 A. I grant, yes, it was adding up and I was becoming
26 nervous about the presence of Father Farrell in the
27 diocese, but I didn't have any evidence of any sexual
28 impropriety, especially with children in our diocese.

29

30 Q. Why did you need any evidence of that in order to just
31 say, "Go back to Armidale. You're not one of ours, anyway,
32 and you're causing problems"?

33 A. I thought I should treat him fairly. I was anxious to
34 give him a fair go, as they say, and I thought I was
35 endeavouring to do that.

36

37 Q. Following on, there were various discussions in the
38 meetings of the Consultors, and ultimately, you agreed that
39 he could go to Merrylands as an assistant priest; is that
40 right?

41 A. He began at Merrylands as a supply, because at the
42 time the parish priest, Father Bray, was in ill health and
43 was taking some leave, so he went there initially as a
44 supply. Then Father Bray came back but on light duties, as
45 far as I remember, and they were still needing further help
46 and, with their agreement, I appointed him to Merrylands
47 and that is much to my regret.

1
2 Q. When you say "with their agreement", do you mean the
3 agreement of Father Bray and --
4 A. Father Gavranovic and Father Bray.
5
6 Q. So in this case, notwithstanding you had the power to
7 appoint to whatever parish you wished, you actually sought
8 the agreement of those two priests to have Farrell?
9 A. I did, yes, yes.
10
11 Q. Why was that?
12 A. Because they had had some experience of him there as a
13 supply, and so I spoke with them just to verify that they
14 would find it acceptable to have him appointed in a
15 permanent position.
16
17 Q. Permanent?
18 A. Yes, as an assistant priest, yes.
19
20 Q. Perhaps if we can have tab 103. This is your letter
21 to Father Farrell appointing him as assistant pastor to the
22 parish?
23 A. Yes.
24
25 Q. It was for effectively a year, 1 January to
26 30 November?
27 A. Yes.
28
29 Q. So it wasn't a permanent, it was a --
30 A. Yes. There were limits to it, yes.
31
32 Q. And the limits were based on your understanding of
33 your agreement with Bishop Kennedy?
34 A. That's right, yes.
35
36 Q. You know that Father Maguire, who was on, I think, the
37 Consultors at this time, wasn't particularly happy with
38 what was happening? Does that ring a bell?
39 A. I learned that, yes, that he had taken some action -
40 then or later I don't know. I had an idea that he rang the
41 Bishop of Armidale, but I thought it may have been
42 Bishop Manning.
43
44 Q. Perhaps if I could have tab 157 on the screen. This
45 is a letter from Father Maguire to Bishop Manning, who by
46 this stage had taken over from Bishop Kennedy, and it is in
47 July 1992. Have you seen this letter recently?

1 A. I haven't, no. I don't remember seeing this before,
2 no, and, of course, by July 1992, Father John Farrell had
3 left our diocese.

4
5 Q. He had. The letter is dated that, but it contains a
6 history of his experience, and I want to take you through
7 that history, if I could, Bishop. It begins in the third
8 paragraph, where he deals with when Farrell originally
9 came. He talks about Father Dixon and his concern with
10 Father Farrell, all of which you knew at the time?

11 A. Father Dixon and his concern. Yes, "brusque manner in
12 dealing with parishioners". I haven't read this letter
13 before, I'm just reading it for the first time.

14
15 Q. No, certainly.

16 A. I see the matters that caused Father Dixon
17 dissatisfaction, yes.

18
19 Q. If you wish to read the whole letter, by all means,
20 Bishop. It continues through the history, much as I've
21 taken you through, in terms of the documents?

22 A. Yes. Yes.

23
24 Q. And then on page 2, in the second-last paragraph,
25 there's reference to the October 1990 meeting which I've
26 taken you through, and reference to the Consultors not
27 receiving very well that there was another appointment
28 going to be offered to him?

29 A. Yes.

30
31 Q. And I think that was Merrylands?

32 A. Yes. Yes. Well, that would be correct, I think, yes.

33
34 Q. If we go to the top of the third page, he refers there
35 to being surprised that the extension of his appointment
36 was not raised at various meetings of the Consultors, and
37 that he was surprised to learn that Farrell had put forward
38 a letter to you expressing interest in applying to be the
39 pastor of St Bernadette's Parish in Dundas Valley?

40 A. Yes. Well, he was surprised and so was I surprised,
41 of course. It was quite inappropriate for him to apply for
42 a parish priest position in the Diocese of Parramatta. He
43 didn't belong to the diocese and I think I pointed that out
44 to him in the reply that I made. So that's quite correct.

45
46 Q. You certainly didn't offer it to him or invite him to
47 apply for it?

1 A. No, certainly not, certainly not, no.
2
3 Q. I think when you approached Father Bray and
4 Father Gavranovic about accepting Farrell, you told them
5 something about his past?
6 A. Yes. It was very interesting, this. I had forgotten
7 that meeting, but on the day before my interview with
8 Justice Whitlam, I happened to have Father Gavranovic visit
9 me, and he told me that he had spoken to Justice Whitlam
10 already and told him about my coming to see him and
11 Father Bray before John's appointment over there, and it
12 recalled it to me. I'm quite sure I did do this, but I had
13 forgotten it completely, and I suppose it's the illness of
14 age which leads one to this. But, anyway, I did go to see
15 them, yes, and, as I say, I was becoming nervous about
16 John's presence in the diocese and the criticisms of the
17 Consultors and others, and so I did consult with
18 Father Bray and Father Gavranovic, and I think I advised
19 them to let me know immediately if anything untoward took
20 place.
21
22 Q. You gave them an idea as to what "untoward" might
23 mean?
24 A. I think I told them that there had been charges of a
25 sexual nature against John in Narrabri, but they had been
26 dismissed, so I told them that, I think, yes.
27
28 Q. And to tell you if anything happened of an untoward
29 nature, including of a sexual nature?
30 A. Let me know immediately, yes.
31
32 Q. And you said that to each of Father Bray and Father --
33 A. They were both present there at that meeting, yes.
34
35 Q. You didn't do that in relation to Father Dixon when he
36 went to Kenthurst?
37 A. No. No, I didn't, but, as I said, I was becoming more
38 nervous about the situation and less content to have
39 Father Farrell in the diocese, yes.
40
41 Q. Perhaps we can have Father Gavranovic's interview,
42 which is at tab 9, and could we turn to page 10. Page 10,
43 towards the bottom, and page 11, set out
44 Father Gavranovic's account of the discussion, and it is
45 similar to the evidence you've just given?
46 A. Yes.
47

1 Q. I won't take you to that unless you wish to read it
2 again.
3 A. No, I'm quite satisfied with what I've seen, if
4 that's --
5
6 Q. Then if we turn over to page 14, towards the bottom of
7 the page, he was asked whether there was any conduct that
8 he thought was unusual, and he sets out there an account of
9 a nuptial mass. Just stopping there, the priest, Farrell,
10 was present at Merrylands from the end of 1991 to about
11 mid-1992; is that right?
12 A. He certainly finished in June 1992.
13
14 Q. So this account --
15 A. Yes, that's right.
16
17 Q. -- I beg your pardon --
18 A. I think he was appointed about January 1991 as
19 assistant priest. He had been supplying for perhaps a
20 month or so before but was appointed as assistant priest
21 and, yes, was there for roughly 18 months.
22
23 Q. Therefore, what Father Gavranovic sets out occurred in
24 that six month period; it follows, doesn't it?
25 A. Yes, that's right, yes.
26
27 Q. He refers to Farrell having five or six altar servers
28 at the mass and that he took them back to the parish house
29 where they were sitting around drinking Coca-Cola and
30 laughing and the like, and that they were there for some
31 time. The Father said, "It is not wise to bring these
32 people into the house and give them Coca-Cola", and he left
33 it at that. Did that come to your attention?
34 A. It didn't come to my attention, no. I rather regret
35 that it didn't. Father Gavranovic apparently didn't put
36 that into the category of something untoward that I might
37 have expected him to report.
38
39 Q. You say he didn't report it?
40 A. No.
41
42 Q. No?
43 A. No, he didn't report it.
44
45 Q. Difficult though it is, Bishop, had that information
46 come to your attention, do you think it would have affected
47 the compassion you had towards Father Farrell in keeping

1 him in your diocese?
2 A. I think it would have, yes. Interaction of that sort
3 with altar servers would have been of concern to me.
4
5 Q. In July 1991, Bishop Manning had replaced
6 Bishop Kennedy?
7 A. Yes.
8
9 Q. Your arrangement was primarily with Bishop Kennedy,
10 was it not?
11 A. It was, yes. Yes.
12
13 Q. Did it affect your view of your obligation to take on
14 Farrell that, in fact, there was a new Bishop in Armidale?
15 A. I wasn't going to hasten a new Bishop into a decision
16 on this matter, but, yes, I understood, of course, that it
17 would depend on Bishop Manning as to whether he stayed on
18 in Parramatta or returned immediately to Armidale.
19
20 Q. Did you have discussions with Bishop Manning from the
21 time he became Bishop in about mid-1991, about Farrell?
22 A. I regret not.
23
24 Q. No?
25 A. No.
26
27 Q. Bishop Manning had a lengthy meeting with
28 Father Farrell in October 1991, where he put to him a
29 number of concerns that he had about him. Did that come to
30 your attention?
31 A. No. No, I'm afraid not.
32
33 Q. Bishop Manning didn't tell you about his concerns and
34 his dealings with Father Farrell?
35 A. He did not, no. I learned of that through the
36 Whitlam Report.
37
38 Q. During the time that he was in your diocese, he was
39 receiving treatment from Dr Blaszczyński? You know that
40 now, I take it?
41 A. Well, yes, I've learned that since. I suppose
42 that's - I'm not sure when that started. I knew nothing of
43 that but, of course, in the Whitlam Report I've read of the
44 referral to Dr Blaszczyński, yes. I'm not sure when
45 treatment by him started.
46
47 Q. At any time did Bishop Manning tell you what

1 Dr Blaszczyński had told him about Farrell?
2 A. No, I received no communication.
3
4 Q. Could I perhaps have tab 135 on the screen. This is a
5 record from Bishop Manning of a conversation he had with
6 Professor Blaszczyński in April, and you will see that he
7 records Professor Blaszczyński as giving advice that Farrell
8 needs to be kept away from children, and "prepubescent
9 children are in danger where he is". That never came to
10 your attention?
11 A. No. I saw that only quite recently, actually.
12
13 Q. You weren't told by anyone else?
14 A. No. No. No, I never received that information, no.
15
16 Q. Did you have any dealings with Father Peters at around
17 this time, who was, I think, head of the Tribunal in the
18 Diocese of Armidale?
19 A. No, I didn't have any dealings at that time, no.
20
21 Q. Did you know him?
22 A. I knew him, yes, as someone who had been a student
23 with me in his formation days, but I didn't have any
24 communication with him over this period.
25
26 Q. About halfway through Farrell's time at Merrylands
27 there was an incident of an observation of Farrell in a car
28 with one or more boys. Do you remember that?
29 A. I do, yes.
30
31 Q. And that came to your attention?
32 A. Yes. I have been reminded of that again. That took
33 place, yes. I think the account was that Father Farrell
34 brought a boy alone to an ordination ceremony at the
35 cathedral in Parramatta.
36
37 Q. And you were told of that?
38 A. Yes, I was told of that, and I did ask Father Farrell
39 about that, and Father Farrell said that was untrue; that
40 he had someone else with him in the car, there was another
41 adult in the car as well as himself, and I reported that to
42 the persons concerned but they said there had been two
43 ordinations over that period and that confused the matter
44 for me and I didn't take it any further.
45
46 Q. You should have, Bishop, shouldn't you?
47 A. Well, of course, in the present culture it would be

1 regarded as very improper for a priest or indeed for any
2 adult, non close family member, to have a child in a car
3 alone like that. It would be considered very
4 inappropriate. In those days, I suppose it was still
5 something that you'd look twice about. The distance from
6 Merrylands to Parramatta is, I suppose, roughly
7 5 kilometres. It was not as if he had taken him on a long
8 journey from Katoomba or somewhere, so I did not regard it
9 as seriously - perhaps not as seriously as I should have.

10

11 Q. It is building up now, isn't it - the accounts that
12 you have had of Farrell that were concerning, not just in
13 relation to children but more generally?

14 A. Yes, and I'm becoming more uneasy about it, yes.

15

16 Q. Then a few months later you received a series of
17 complaints from Father Arcamone?

18 A. Yes, I remember that was on, if I recall, June 2,
19 1992. Father Arcamone came to see me late one afternoon to
20 report that this father of a boy at Merrylands had been to
21 see him and lodged complaints about statements that
22 Father Farrell had made to the altar servers.

23

24 Q. Using inappropriate language?

25 A. Very inappropriate language.

26

27 Q. Of a sexual nature?

28 A. Yes, of a sexual nature, yes.

29

30 Q. He also told you of a complaint about
31 Father Farrell --

32 A. Putting his arm around a girl at a party.

33

34 Q. Yes.

35 A. At a disco - at a disco.

36

37 Q. A disco, indeed.

38 A. As if to feel whether she was wearing a bra or not.

39

40 Q. So you received those two complaints. What did you
41 do?

42 A. I got in touch with the principal of the school there,
43 as Father Arcamone had recommended, and she was happy to
44 have a conversation on the phone about that, and she
45 confirmed, yes, that the boys had come to her, the altar
46 servers, and confirmed that Father Farrell had made these
47 statements, and also someone had reported the incident of

1 the girl at the disco. The information was starting to
2 spread. There was a lot of unrest among the Parents and
3 Friends. The principal herself was not prepared to act on
4 rumours. She had respect for the priest, said he had a lot
5 going for him in a way, but, at the same time, when he came
6 to the school, he almost always used some blue language
7 towards the staff, and she was very uneasy about the
8 situation. So, of course, that left me also very uneasy
9 and I was concerned particularly that the Parents and
10 Friends were taking that view, and not without reason,
11 I imagined.

12
13 Q. You ultimately spoke to Farrell about all of those
14 matters?

15 A. I did, yes. Yes.

16
17 Q. I think your account of that is behind tab 149. Are
18 they your notes.

19 A. Yes, they are. That's my writing, yes.

20
21 Q. And those are notes of a meeting with Father Farrell
22 on 29 June?

23 A. 29 June, yes.

24
25 Q. Perhaps you can take us through that note?

26 A. Spoke to Father John Farrell. Admitted to language
27 used in a fit of anger when the altar servers had
28 misbehaved. Thought that Annette Kenny herself uses some
29 blue language and tells some "off" jokes at times.

30
31 I made a point after that "misbehaved". What was the
32 pointer? The pointer was for something, if it could be
33 scrolled further down. Oh, yes: (Matter of the girl
34 denied. Does not even - I suppose - know which girl. Many
35 would put their arms around the priest very simply.)

36
37 Q. So he's accepting the language towards the altar boys?

38 A. Yes.

39
40 Q. And denying the approach to the girl?

41 A. Yes.

42
43 Q. And then you're saying you're going to terminate --

44 A. I then say: Terminate his appointment as from
45 15 August. However, next Sunday, 5 July, would be his last
46 Sunday at Merrylands.

47

1 My reason for that was not to leave him out of pocket.
2 He was going on leave, and I think overseas leave, in July,
3 so I was happy to pay him an allowance until 8 August, but
4 he would not actually be in the parish. His last Sunday
5 there would be the Sunday following the interview, on
6 5 July.

7
8 Q. Did you give him the benefit of the doubt in relation
9 to the girl, given that he'd denied it?

10 A. What had happened with the altar servers was enough
11 for me to reach a decision. I didn't have to take one view
12 or the other about the event of the girl.

13
14 Q. Tab 150 is your letter to him indicating that his
15 appointment will be terminated?

16 A. Yes, the following day, I suppose, 30 June, I wrote
17 more or less summing those matters up.

18
19 Q. You thank him for his service and offer that if you
20 could be of any help personally in his priestly ministry,
21 you would endeavour to do so?

22 A. Yes. The key word in that sentence, which I remember
23 taking care about, is "personally": there was no future
24 for him in the Diocese of Parramatta, but if as a personal
25 adviser I was able to be of any help to him, I was prepared
26 to do so.

27
28 Q. And that was notwithstanding the various pieces of
29 information you had about him and those that you had
30 accepted?

31 A. That's right, yes. I was still a fellow priest and
32 prepared to be of assistance to a fellow priest if I could,
33 but not in his role in Parramatta Diocese.

34
35 Q. You told Bishop Manning of the termination?

36 A. I did, yes. I phoned him that day, the 29th I think
37 I phoned him.

38
39 Q. And you told him of the reasons?

40 A. Yes, I think so. Yes, I believe so.

41
42 Q. Did you have any further dealings with Bishop Manning
43 in relation to Farrell after that time?

44 A. I didn't, no. No.

45
46 Q. Did you have any dealings with Farrell?

47 A. No, I've never laid eyes on him since.

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Q. You didn't --

A. There was a panic type of response, as you would know. The following day Bishop Manning wrote to him to suspend him from ministry everywhere - really, a universal suspension. So he wrote a type of panicked letter to me asking me to intervene about that, but I ignored it and I've never seen Father Farrell since.

Q. When you say "a universal suspension", "he wrote a type of panicked letter", that's Farrell you're referring to.

A. Yes. Yes.

Q. So Farrell sought your intervention to stop what Manning had put in place?

A. He thought that what Bishop Manning had done far exceeded what I had used to stand him down, to terminate the appointment.

Q. What view did you have of Bishop Manning's response of withdrawing his faculties on the basis of the information you provided him?

A. Well, Bishop Manning, at this stage, had been nearly 12 months in Armidale. I thought, well, he would be acting on information that was available to him and I respected that.

Q. You assumed, I take it, that he had more information than you had in relation to Farrell?

A. Yes.

Q. In order to justify a withdrawal of faculties?

A. Yes.

Q. You say you had nothing more to do with Father Farrell after that?

A. I didn't, no.

Q. When did you next hear of him?

A. I noticed in the file - I remember this, too - I had a letter from an Armidale priest called Father Frank Le Fevre, a lengthy letter, really appealing to me to give Father Farrell another chance, and I didn't answer it for a while, because the thing was quite decided and I had a lot of other things on my plate at the time, but I did eventually answer and I note in that answer that I - I said

1 that I believe that Father Farrell has been referred to the
2 Special Issues Committee and that their assessment has not
3 been favourable. So somehow I had heard that. I don't
4 know how I heard that.
5
6 Q. Perhaps we'll come to that letter. Tab 169 is the
7 letter that you've described that came to you. As you say,
8 the letter was in favour, in general terms, of Farrell? Is
9 that the letter you're referring to?
10 A. No, it was a much longer letter than that.
11
12 Q. This is the attachment to that letter?
13 A. This is the attachment I'm looking at?
14
15 Q. Yes, it is the attachment. We can scroll down?
16 A. Yes. The letter is a five- or six-page letter,
17 I think.
18
19 Q. Yes. I won't take you through all of the letter but,
20 in effect, as you said, it was a letter in support of
21 Father Farrell?
22 A. Appealing to me to give him another chance, I think.
23
24 Q. To give him another chance in your diocese?
25 A. Yes. Yes.
26
27 Q. You see that's dated 23 October, so that was several
28 months after he'd left you?
29 A. That's right, yes.
30
31 Q. And then your response was tab 179, if we can have
32 that up. This is in December, so that's consistent with
33 what you've said, that you took some time thinking about
34 your reply?
35 A. Yes.
36
37 Q. Could we go through that letter. You refer to your
38 action in terminating his appointment, in the second
39 paragraph?
40 A. Yes.
41
42 Q. And that a number of priests had expressed
43 dissatisfaction?
44 A. Yes.
45
46 Q. And the history of you having taken him?
47 A. Yes.

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Q. Perhaps we could just scroll up. You state that you believe he's incorrect in holding that Bishop Manning would - what's that word?

A. "would lift his suspension" , "lift his suspension of John were I or another Bishop prepared to take him."
"I believe you are incorrect in that assessment."

Q. And then, halfway down that paragraph, you say:

John has been referred, as you probably know, to the provincial committee appointed to deal with matters of this type.

A. Yes.

Q. Stopping there, you're referring there, as you say, to the Special Issues Resource Group?

A. I am, yes.

Q. Can you help us now with how you knew that?

A. No, I can't, I don't know how I knew that. But I go on to say that the outcome of their conversations with John has not been favourable to his resuming his priestly ministry. I don't know how I knew that.

Q. You say, "John has been referred, as you probably know". Can we take it that, as far as you knew, there was nothing particularly confidential about the referral of Farrell to that committee?

A. I don't think so, no. No.

Q. And you can't now help us as to how you heard about the outcome of the conversation?

A. How I heard about the outcome, no, I'm afraid not.

Q. Is that something you would expect to be told, given that he wasn't a priest of your diocese but had been --

A. No, it wouldn't necessarily concern me, no. He was now back in the court of Bishop Manning really.

Q. Is it likely that you heard about it at a Bishops Conference?

A. Could well be, yes, from Bishop Manning; he could have said something at a Bishops Conference about it.

Q. That's the sort of thing that you would expect another

1 Bishop to discuss with you, given you knew the priest?
2 A. Well, yes, I think so, yes.
3
4 Q. Did you have any dealings with a Special Issues group
5 when you were Bishop?
6 A. I didn't, no. I didn't have occasion to refer anybody
7 to the Special Issues group, no.
8
9 Q. You didn't?
10 A. No.
11
12 Q. As a Bishop, were you involved in the development of
13 the various protocols?
14 A. Only as an observer and a supporter. I was not on the
15 group that was forming those protocols and developing them,
16 but I'm certain that they were taking place and of course
17 I supported what their goal was and was prepared to abide
18 by their resolutions.
19
20 Q. Nothing came up in your time that caused you to have
21 recourse to them?
22 A. No. No. No.
23
24 Q. When did you finish as the Bishop?
25 A. In July 1997.
26
27 Q. Towards Healing had been in place for some relatively
28 short period of time?
29 A. Yes, just a short - I think the previous year,
30 perhaps.
31
32 Q. Did you have anything to do with people going through
33 Towards Healing?
34 A. I don't recall that, no. I don't recall that I did.
35
36 Q. Thank you. Bishop, I want to turn to a completely
37 different topic, if I may, and that concerns the St Gerard
38 Majella Society?
39 A. Yes.
40
41 Q. You understand the Society that I'm referring to?
42 A. I do, yes, of course.
43
44 Q. As I understand it, the Society of St Gerard Majella
45 was a local Australian male religious order, and it had an
46 associated female order, which was founded in the early
47 1970s?

1 A. That would be correct, yes.
2
3 Q. It was technically a lay religious institute of
4 diocesan right?
5 A. Correct, yes.
6
7 Q. What was the effect of that?
8 A. It meant that the diocese was responsible for the
9 oversight of the order. Most of the well-established and
10 long-established religious orders are of Pontifical right,
11 which gives them a protection against the local Bishop,
12 really. This has developed over the centuries of course
13 where I guess religious communities have often been, in
14 various ways, held to account by local bishops. There are
15 some familiar stories from the life St Mary of the Cross
16 MacKillop in that regard. So most of the established
17 religious orders are of Pontifical right, but, however,
18 this was a small society at its beginnings, and at this
19 stage it was of diocesan right.
20
21 Q. The period - that is, 1973 - when it was formed - it
22 would have been unusual then, wouldn't it, for a new
23 society to be formed?
24 A. You can never tell when a new society or congregation
25 is going to be formed. There have not been - there have
26 been a few modern ones, even in a remote corner of the
27 Catholic world like Australia, yes; the Brown Nurses, for
28 example, who care for the aged and sick in their homes.
29 There have been a few groups, even in Australia. So it is
30 an incentive and a stimulus that's never dead in the
31 church, I think. There are always people recognising a
32 charism and a need, again, to start a group serving the
33 community and serving people through the gospel.
34
35 Q. This was the only society of this type that was in
36 your diocese?
37 A. Yes, it was, yes.
38
39 Q. It was founded by Brother John Sweeney earlier in
40 1958, in the Archdiocese of Sydney?
41 A. Yes.
42
43 Q. And then when the diocese changed, as you've already
44 described, it became based in your diocese in Parramatta?
45 A. Yes. Yes.
46
47 Q. Could I take you shortly through some history of the

1 Society relevant to the purposes of your evidence. In May
2 1993, the deputy head of the order,
3 Brother Joseph Pritchard, was convicted for the sexual
4 abuse of a naval apprentice. Do you recall that?
5 A. Yes.
6
7 Q. He was also chaplain at HMAS Nirimba?
8 A. Yes that's right.
9
10 Q. Members of the Order at around that time also took
11 allegations of sexual misconduct within the Society to you?
12 A. Yes.
13
14 Q. Do you remember that?
15 A. I do, yes.
16
17 Q. What was the nature of the allegations?
18 A. Father Rodger Austin, a canonist, running a private
19 canonical service, was engaged by the Brothers to oversee
20 the procedures of their chapter, in which they elected a
21 new Superior General, and a number of the Brothers came to
22 know him through that. Then in the following year, I think
23 probably prompted by the affair of Brother Pritchard, some
24 of them went to him and - I don't think in writing at this
25 stage, but verbally - made these allegations of misconduct
26 against several of the Brothers in the community.
27
28 Q. And that was allegations of misconduct by older
29 Brothers on younger Brothers?
30 A. That's right, yes. Well, yes, that's right.
31
32 Q. The younger Brothers were effectively children?
33 A. No, the - in general, they would not have joined the
34 Society as children, only at the age of 18 or older, some
35 of them much older. Some of them may have been under 18
36 when they joined. That was never - it was - yes, some of
37 them were certainly under 18 when they joined, but very
38 few. That was the exception.
39
40 Q. So the allegations were of sexual misconduct by adult
41 Brothers on adult Brothers and, where they were there,
42 under-18-year-olds?
43 A. Yes. Yes.
44
45 Q. So they were the allegations?
46 A. That's right, yes.
47

1 Q. And they were made to Father Austin?
2 A. Father Austin, who brought them to me, yes.
3
4 Q. Did he bring them to you with a recommendation as to
5 what you should do?
6 A. Yes, he did have a suggestion that I set up an inquiry
7 and I did that, and since he was familiar with them and the
8 Brothers were easily able to access him, had confidence in
9 doing so, I appointed him and Father Peter Blayney to
10 conduct the inquiry on my behalf.
11
12 Q. Father Blayney was?
13 A. Father Blayney was a canonist in our diocese.
14
15 Q. So the inquiry was an administrative inquiry that you
16 created; it wasn't in relation to any canon law procedure?
17 A. I suppose you could say that, yes, I think so, yes.
18
19 Q. And the Terms of Reference, if I can describe it that
20 way, of the inquiry were to investigate the allegations
21 that had come forward?
22 A. Yes.
23
24 Q. And more generally look at the Order?
25 A. Look at the - look at the Society more generally, yes,
26 yes.
27
28 Q. And they ultimately reported to you?
29 A. Yes, they did. They reported to me at the end of
30 August, I think, in 1993.
31
32 Q. What did they tell you in that report?
33 A. Well, in general, the allegations were verified
34 through interviews with a number of the Brothers and
35 interviews with the senior Brothers involved. They were
36 able to tell me that, in general, they were verified, and
37 I took action accordingly.
38
39 Q. What did you do?
40 A. I stood down two of those Brothers from their priestly
41 ministry, with immediate effect, Brothers Pritchard and
42 Robinson, and I allowed Brother Sweeney, for the present,
43 to continue in his priestly ministry but with restrictions
44 and with limited access to the Society. I thought the
45 allegations against him at the time were less serious than
46 against the other two. But of course what happened
47 subsequently was that in the next month - I think September

1 or October of 1993 - another Brother came forward with
2 quite serious allegations against Brother John Sweeney.
3 Again, I had those investigated, by Father John Usher in
4 this case, and he brought me his report, it would have been
5 in February 1994, I think, and at that stage Brother John
6 Sweeney was stood down from the priestly activities.
7

8 Q. Did you go to the police when you received the report
9 from Father Austin?

10 A. No, I didn't, because it was never clear to me whether
11 there had been any sexual abuse of persons under 18 years
12 of age. There could have been but it wasn't clear that
13 there was.
14

15 In the case that then subsequently came and was sent
16 to Father John Usher, there was better evidence that the
17 abuse took place when this person was under 18.
18 Father John Usher drew that to my attention, that this
19 person could take the complaint to the police, and, in
20 fact, in March of 1993 he did so.
21

22 Q. 1994?

23 A. 1994, I'm sorry, yes.
24

25 Q. The person who was the subject of the abuse took the
26 matter to the police?

27 A. That's right, yes.
28

29 Q. You were aware of that shortly after it happened,
30 I take it?

31 A. Yes. Well, I became aware of it, yes. Yes. I'm not
32 sure when, but I became aware of it, yes.
33

34 Q. Did you consider that you had an obligation, leaving
35 aside whether it was a legal one or otherwise, to go to the
36 police or report to the police when you received
37 Father Usher's report?

38 A. No, I didn't see that as my obligation. I suppose
39 I was principally concerned about the impact on the
40 community - the church, the parish community of Greystanes
41 in particular, the community of the Brothers - so the
42 matters that I addressed were principally those related to
43 the Brothers and the Catholic community. I did not see
44 myself as bound to take those complaints to the police.
45

46 Q. When you say that you were concerned about the impact
47 on the community and the church community, do you mean that

1 if there was publicity in relation to what this Society had
2 been up to, that would adversely affect the reputation of
3 the church and, therefore, the church community?
4 A. No, it wasn't really about what became known. The
5 situation was a very large parish of Greystanes, where
6 possibly there would be 2,000 people worshipping every
7 Sunday; a community in love with the Brothers of the
8 Society of St Gerard, who had ministered, as far as they
9 knew, so faithfully and truly to them and had given them a
10 liturgy and a musical ministry that I suppose was among the
11 best in the diocese, and what now was to happen when their
12 pastors were suddenly stood down and in disgrace, and what
13 were they to think and how were they to be cared for, who
14 was going to step into the breach. They were the sorts of
15 things I was concerned about.
16
17 Q. Who did step into the breach?
18 A. Eventually, it was a very fine priest called
19 Father Gerald Iverson who was in our diocese at the time,
20 he had originally come from Wagga Wagga but had joined our
21 diocese, and I asked him to take over the leadership of the
22 community at Greystanes, and he did so with wonderful
23 pastoral skill and wisdom.
24
25 Q. So it became back to being part of the diocese?
26 A. That's right, yes. Yes.
27
28 Q. After you received Father Usher's report, as you said,
29 you stood down Brother Sweeney, and that was in February
30 1994. What was the next event relevant to the Society?
31 A. Where I was concerned, I suppose the next event was
32 I became aware of the police investigations that were
33 continuing, and I suppose the next event was that
34 I informed the diocesan solicitors that that was happening.
35
36 Q. The police investigations, did you understand, arose
37 from the victim of Brother Sweeney having gone to the
38 police in about March 1994?
39 A. I understood that, yes, and I presumed there were
40 others who went to the police subsequently.
41
42 Q. So you became aware of the police investigations?
43 A. Yes.
44
45 Q. In relation to the Society more generally?
46 A. I did, yes.
47

1 Q. And you sought legal advice?
2 A. Yes, from Makinson & d'Apice.
3
4 Q. What were you particularly concerned to get advice
5 about?
6 A. There were several issues, I think, that arose. The
7 responsibility of the diocese, where the Society was
8 concerned, where the allegations and possible convictions
9 were concerned - I was anxious to know what were the
10 obligations of the diocese there.
11
12 Q. At that stage, did you know whether any charges had
13 been laid against anyone --
14 A. I wasn't sure, no. I don't think I knew then, no.
15 I'm not sure when the charges were laid and I'm not sure
16 what were the charges either, even now.
17
18 Q. Were you approached by the police?
19 A. No, I wasn't, no. But in my conversation with
20 Makinson & d'Apice they spoke of the possibility of a
21 warrant being issued for the police to visit me, and so
22 I became aware of that through Makinson & d'Apice.
23
24 Q. That there was that possibility or actual prospect?
25 A. Possibility, I think. Possibility.
26
27 Q. Did you do anything, after learning of that
28 possibility, in respect of records held --
29
30 THE CHAIR: Q. I'm sorry, just before we ask that
31 question, you speak of the possibility of a warrant being
32 issued?
33 A. Yes.
34
35 Q. What sort of warrant did you have in mind?
36 A. They said it was possible that the police would want
37 to search my office.
38
39 Q. A search warrant?
40 A. A search warrant, yes.
41
42 THE CHAIR: Yes.
43
44 MS FURNESS: Q. That search warrant would be in relation
45 to, as you thought, the fact that the Society was part of
46 the diocese?
47 A. Yes. Yes.

1
2 Q. And you may well have records in relation to the
3 Society because it was part of the diocese?
4 A. That's right, yes. That's right, yes.
5
6 Q. At that stage, you had Father Austin's and
7 Father Blayney's report?
8 A. Yes.
9
10 Q. And you had Father Usher's report?
11 A. Yes.
12
13 Q. Where were they?
14 A. In the diocesan archive. I asked Father Breslan, the
15 chancellor, to establish the archive, which he did at
16 Guildford - there was some space available there. We had
17 very little space in the diocesan office, and he
18 established the archive and all our foundational documents
19 and these reports were held in the archive.
20
21 Q. And day-to-day documents that you had regard to on a
22 regular basis were held other than in the archives?
23 A. Yes, in the diocesan office, yes.
24
25 Q. Where was the diocesan office?
26 A. In 10 Victoria Road, Parramatta, at that stage.
27
28 Q. And it was common, in those days, to have separate
29 archives, I take it?
30 A. Yes, it was, yes, every diocese has them.
31
32 Q. When you set up, in the time that you did set up -
33 1986, I think?
34 A. Yes.
35
36 Q. You set up the archives then?
37 A. I did, yes.
38
39 Q. So you were aware there was a possibility of a search
40 warrant?
41 A. Yes.
42
43 Q. Did you do anything knowing of that possibility?
44 A. Well, I didn't, no. I thought there was nothing very
45 much that I could do but wait and see, and Mr d'Apice had
46 advised me that if there were such a search warrant,
47 I should get in touch with them.

1
2 Q. Did you, yourself, think about what documents you
3 might have or did have that might be relevant to a police
4 investigation into the Society and, most likely, sexual
5 conduct?
6 A. I wasn't sure, no, what documents they were interested
7 in, really.
8
9 Q. Did you turn your mind to it?
10 A. I didn't, I'm afraid, no.
11
12 Q. What about the report of Father Usher and the report
13 of the other two Fathers?
14 A. Well, I wasn't sure what they were - they would be
15 looking for in those circumstances. The reference that
16 Mr d'Apice made to the search warrant surprised me a bit,
17 really, but I took in what he said.
18
19 Q. You didn't take any steps to ensure that those two
20 reports were in some way secured?
21 A. No, no, they were already in the diocesan archive.
22 I didn't take any further steps about them.
23
24 Q. Ultimately, a warrant was executed?
25 A. On 13 December 1994.
26
27 Q. And that was at the Parramatta office?
28 A. It was, yes.
29
30 Q. You weren't there?
31 A. I was attending a meeting of the NSW Ecumenical
32 Council in Kent Street, Sydney.
33
34 Q. You had no notice of the warrant being executed?
35 A. I had no notice of the warrant, no.
36
37 Q. When did you first find about the warrant being
38 executed?
39 A. The diocesan secretary rang me to say that it was
40 being executed, it was in progress, and I rang Mr d'Apice,
41 then, who took various steps, such as lawyers take in those
42 situations, and he really ran the matter from there on. I
43 think he took advice, he got in touch with the police, and
44 so on, but he really took charge of it then.
45
46 Q. Did you hear, via your lawyers, whether the police
47 were content with what they had searched and taken, based

1 on their expectation?
2 A. I don't know where I would have heard that from, but
3 following the execution of the warrant at my office, a
4 warrant was executed at the office of Dr Rodger Austin, and
5 so I presumed that they wanted documents from both those
6 places.
7
8 Q. Do you know whether the archive at Guildford was the
9 subject of search?
10 A. I don't think so, no. Not that I know of. No, I'm
11 pretty sure it wasn't.
12
13 Q. It was just the --
14 A. Just the diocesan office, yes.
15
16 Q. Presumably, when you returned to the office, it was
17 evident that there had been a search?
18 A. The office was in total disarray. Files were
19 scattered across the floor from end to end of the office.
20 The drawers of my desk were pulled out and emptied and it
21 was as if someone had trashed the office. I was very
22 distressed, left immediately and went home and did nothing
23 about it, but steeled my teeth and, the next morning, came
24 in early and started setting the files in order again and
25 continued work.
26
27 Q. After the warrant was executed, did you have any
28 dealings with the police or your lawyers on your behalf
29 about what was seized?
30 A. Not about what was seized, no, I don't think so.
31
32 Q. About anything else relevant to the Society and the
33 diocese?
34 A. Not that I can recall just now, no. Subsequently, of
35 course, in 1995, I suppose, I became concerned that there
36 was some possibility of charges being laid against me for
37 failure to disclose criminal information, and I informed
38 Mr d'Apice of that, received a long letter from him giving
39 an account of what those possibilities were. In fact,
40 I was interviewed by the police in 1995 - I forget the
41 date. Mr d'Apice was present. I don't think the interview
42 went very far, really. It roamed around a number of
43 matters, including financial affairs of the Society, which
44 I didn't expect to have to discuss and I wasn't really well
45 prepared for, so it was not, I think, a very fruitful
46 interview.
47

1 Q. You weren't charged?
2 A. I wasn't charged, no, and the record of that interview
3 was delivered to us.
4
5 Q. Did it make you reconsider the security of documents
6 held by the diocese?
7 A. It did, yes. Yes, I think that I became very
8 concerned with confidentiality of the diocesan files - very
9 concerned.
10
11 Q. Prior to the seizure of those records and the
12 execution of the search warrant, were you conscious that
13 records held by the diocese could be obtained by the State
14 by way of some legal means?
15 A. I had never heard of that happening. I suppose, had
16 I been asked, I'd have said yes, but the possibility of
17 that happening seemed to me to be extremely remote.
18
19 THE CHAIR: Q. You said Mr d'Apice gave you advice that
20 it could happen, didn't he?
21 A. He did. He did, yes.
22
23 Q. How long before the police executed the warrant did
24 you get that advice?
25 A. I was advised on 7 December and the warrant was
26 executed on 13 December 1994.
27
28 MS FURNESS: Q. You say that it did make you reconsider
29 the security of your files, and you were concerned with
30 confidentiality.
31 A. I was, yes.
32
33 Q. What did you do in relation to that concern?
34 A. Well, from that point onwards I became a bit cautious
35 about what I kept on file - maybe irrationally, as I look
36 back on it now. I would say, in hindsight, I was
37 traumatised by the event on December 13, 1995. It is one
38 of the dates that stands out as a black day in my history.
39 I would say I was traumatised and suffered stress disorder
40 as a result. I'd say, in hindsight, I should have taken
41 counselling.
42
43 Q. Did you destroy any documents that you had, that you
44 didn't want anyone else, including the State, to get hold
45 of?
46 A. Not from the past, no, but I did, from that point,
47 became cautious about what I filed. I didn't keep

1 everything that could have been filed.
2
3 Q. So that you made notes from time to time as you
4 ordinarily would and then disposed of those notes rather
5 than keep them in the file?
6 A. I kept as much as I could in my head, yes.
7
8 Q. Did that include material in relation to complaints of
9 a sexual nature against priests?
10 A. By that time, I was aware that if there were any such
11 complaints regarding minors, that I would be bound to
12 report them, so I --
13
14 Q. Report to whom?
15 A. I beg your pardon?
16
17 Q. Report to whom?
18 A. To the police. Yes, I was conscious by that time that
19 I would be so bound.
20
21 Q. Sorry, "By that time" you mean 1995/1996?
22 A. Yes, that's right, by that time, and so nothing of
23 that nature was destroyed, but a number of other matters of
24 a confidential nature were destroyed.
25
26 Q. Give us an example of what you destroyed?
27 A. Well, I can give you a theoretical example of
28 something serious.
29
30 Q. Perhaps you can give us an actual example first,
31 Bishop.
32 A. Well, there was a letter that's in your file, which
33 you've got there, from - written by myself to Makinson &
34 d'Apice about a matter. It was not in my file. It was in
35 the Makinson & d'Apice file.
36
37 Q. So you destroyed it?
38 A. I did, yes, and there's reference in that letter to
39 another letter I had written, which I had not kept on the
40 file.
41
42 THE CHAIR: Q. Sorry, the reason you didn't keep these
43 on file was what?
44 A. That for the respect for the confidentiality of things
45 that were conveyed to me as Bishop.
46
47 Q. At the moment it looks like you were keeping them, as

1 it were, undiscoverable by police. Was that the object?
2 A. No, that was not the object. It was --
3
4 Q. Who were you keeping them confidential from?
5 A. From anyone who could invade the office. I'd become
6 conscious, perhaps irrationally so after the raid
7 on December 13, 1995, of the vulnerability of confidential
8 files.
9
10 Q. The raid, as you put it, was the execution of a search
11 warrant by the police?
12 A. Yes.
13
14 Q. Who else did you think might raid the office to get
15 access to the files?
16 A. Well, there could have been other people to raid the
17 office?
18
19 Q. Who might have raided the office?
20 A. The office was in a public building and there are
21 thefts that take place in public buildings and I thought
22 people's confidentiality in matters of a very sensitive
23 nature deserved respect.
24
25 MS FURNESS: Q. No-one else, or no institution, has
26 sought by compulsion - leaving aside, of course, the
27 Royal Commission - any documents from you since that time?
28 A. From me personally?
29
30 Q. From the diocese, while you were there as Bishop?
31 A. Until 1997?
32
33 Q. Yes.
34 A. No, I don't think anyone has, no, in that time.
35
36 Q. Can I show you a letter, and perhaps we have copies
37 for the bench as well as the Bar table. Bishop, this is a
38 letter from you to your lawyers dated 15 August 1996. Do
39 you see that?
40 A. Yes.
41
42 Q. You've seen this recently, I take it?
43 A. I have, yes.
44
45 Q. Is this the letter you were referring to?
46 A. It is, yes.
47

1 Q. So this is the letter that you had destroyed so that
2 it wasn't on your files?
3 A. I didn't keep it on file, no.
4
5 Q. When you say you didn't keep it on file, you didn't
6 keep it anywhere else, did you?
7 A. No.
8
9 Q. You ripped it up?
10 A. Yes.
11
12 Q. Just dealing, firstly, with the top of that letter, it
13 refers to Father Cattell?
14 A. Yes.
15
16 Q. We've blanked out the other person?
17 A. Yes.
18
19 Q. Who was Father Cattell?
20 A. Father Cattell was a priest of the diocese, or had
21 been a priest of the diocese. By that time I think he had
22 probably been convicted of --
23
24 Q. He was convicted of child sexual abuse offences?
25 A. He was, yes, and was serving a sentence, I think, by
26 that time.
27
28 Q. And this letter was in relation to civil action that
29 was taken against --
30 A. I believe so, yes.
31
32 Q. -- the diocese and the Father?
33 A. Yes. Yes.
34
35 Q. When you say you don't have the previous letter,
36 that's the letter of 6 August you're referring to? Do you
37 see the first sentence?
38 A. Yes. Well, I didn't keep that either, apparently, but
39 no, I was referring to the other letter. I did inform CCI
40 officially of potential claims in regard to this case.
41 What we were asked to do at that time was to write to
42 Father Peter Connors and he was to hand on the information
43 without names to the Board of Catholic Church Insurances.
44 I don't have - I didn't keep that either.
45
46 Q. You destroyed that too?
47 A. Yes. That's what they were inquiring about,

1 apparently. I replied, you see, because they were
2 inquiring about that. That was the gist of the letter.

3

4 Q. Just stopping there, you informed CCI, which is
5 Catholic Church Insurances, of potential claims in relation
6 to Father Cattell?

7 A. Yes.

8

9 Q. So what you were telling CCI, from the information
10 available to you and the diocese, was if there were
11 complaints received against Father Cattell that hadn't yet
12 gone any further than complaints; that's what you mean by
13 "potential claims", isn't it?

14 A. They would refer to, I think, past matters, past
15 allegations against Father Cattell.

16

17 Q. That hadn't resulted in claims, so that they were
18 still potential?

19 A. Yes, yes.

20

21 Q. You presumably had regard to your files in order to
22 tell CCI what they wanted to know?

23 A. Yes, yes, I think so.

24

25 Q. Did you destroy the letters that provided the
26 information to you to tell CCI?

27 A. I can't recall that.

28

29 Q. You probably did, Bishop?

30 A. Yes. I didn't destroy anything that had come to me
31 before the police warrant was executed. It was after that
32 I became sensitive about what --

33

34 THE CHAIR: Q. Remind me again, when was the warrant
35 executed?

36 A. On 13 December 1995.

37

38 MS FURNESS: Q. 1994?

39 A. 1994, was it?

40

41 Q. Was it 1994 or 1995? 1994?

42 A. Yes, that's right.

43

44 THE CHAIR: Q. You say you didn't destroy any document
45 that existed before that time?

46 A. No. No.

47

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

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

4

5 Q. You say:

6

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

12

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

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

17

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

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

22

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

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

28

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

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

33

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

36 A. Yes, yes.

37

38 Q. So we can take it, can we, that the source of the
39 information you provided to CCI you destroyed at some time?

40 A. Yes. Yes, I think so, yes.

41

42 Q. As well as the advice to CCI?

43 A. Yes.

44

45 Q. Which contained information relevant to potential
46 claims?

47 A. Yes.

1
2 MS FURNESS: Your Honour, I note the time.
3
4 THE CHAIR: Q. This was evidence that suggested criminal
5 offending by priests, I assume?
6 A. Yes, I don't know whether - what it was, your Honour.
7 I don't know what documents we're referring to.
8
9 Q. But documents of that character suggesting criminal
10 activities by priests would have been amongst the documents
11 you destroyed, I assume?
12 A. I don't have a recollection of destroying a lot of
13 documents at all, but I agree that the evidence of this
14 letter is that I did destroy at least that document, yes.
15
16 MS FURNESS: Q. When you say "at least that document",
17 what document are you referring to?
18 A. The one to which I say "this I did in 1994".
19
20 Q. And that's the advice to CCI?
21 A. Yes, the letter to Bishop - to Father Connors.
22
23 Q. Yes, in relation to --
24 A. Potential claims, yes.
25
26 Q. It would be pointless, wouldn't it, to destroy that
27 letter without destroying the source documents on which it
28 was based?
29 A. Yes, I can't recall that.
30
31 Q. I understand you can't recall it?
32 A. Yes.
33
34 Q. But you understand the reasoning, don't you, Bishop?
35 A. Yes, I do, yes.
36
37 Q. And it is likely, therefore, that you destroyed the
38 source document?
39 A. That's an interpretation, yes.
40
41 Q. Which were likely to be complaints against priests,
42 and given the topic of this letter, regarding
43 Father Cattell, of a sexual nature?
44 A. It could be, yes, could be.
45
46 Q. More than "could be", it's likely, isn't it?
47 A. It's possible, yes.

1
2 Q. It's more than possible --
3 A. Righto.
4
5 Q. -- Bishop, isn't it?
6 A. I'd leave that for the Commission to determine it.
7
8 Q. The Commission will determine it, Bishop, but I would
9 like you to answer my question: it is more than possible,
10 isn't it; it is likely?
11 A. I'd leave it to the Commission to decide that.
12
13 Q. I understand that. You've said that. I would still
14 like you to answer my question?
15 A. Yes, I can't recall that and I'm not prepared to
16 commit myself to it.
17
18 Q. You're not prepared to commit yourself to admitting
19 that you destroyed the documents we're referring to?
20 A. No, no.
21
22 THE CHAIR: Q. Bishop, you've given the indication of
23 having a very clear recollection of many events of this
24 time, but you say you don't recall the character of the
25 documents you destroyed?
26 A. No, no, I don't, no.
27
28 MS FURNESS: Q. Well, you recall the character to the
29 extent that you recalled that you destroyed a letter of
30 this character - that is, advice to CCI about potential
31 claims?
32 A. Because it has been brought to my attention through a
33 letter I wrote which was retained in the files of Makinson
34 & d'Apice.
35
36 Q. Because you'd destroyed your copy?
37 A. Yes.
38
39 MS FURNESS: Is that a convenient time, your Honour?
40
41 THE CHAIR: We will take the morning adjournment.
42
43 SHORT ADJOURNMENT
44
45 MS FURNESS: Your Honour, I tender the letter from the
46 Bishop to Mr Kohn dated 15 August 1996.
47

1 EXHIBIT #44-008 LETTER FROM BISHOP HEATHER TO MR KOHN
2 DATED 15/08/1996
3

4 MS FURNESS: Q. Bishop, I was asking you questions about
5 the Society. The Society was ultimately closed down by
6 you; is that right?

7 A. That's correct, yes.
8

9 Q. When was that?

10 A. Probably 1996, I think.
11

12 Q. Perhaps if I can help you with some information
13 I have?

14 A. Yes.
15

16 Q. Which is December 1994, which would be --

17 A. Oh, as early as that? Yes.
18

19 Q. -- shortly after the execution of the search warrant?

20 A. December 1994, yes. Yes. Well, my memory of it is
21 that following the revelations and the determinations that
22 I made late in 1993 and early 1994, a number of the
23 Brothers left. A fairly small contingent remained and they
24 elected Brother Maurice Taylor as their Superior. It could
25 have been as few as five or six remained; a number had left
26 in the process. And I thought the charism was still sound,
27 that the idea of a group of men and women who would devote
28 themselves to the teaching of scripture in State schools,
29 so I encouraged them to continue on, but, in the event, it
30 didn't prove to be possible. Several of the Brothers
31 joined other congregations and the others just dispersed.
32

33 Likewise, with the Sisters, I provided some assistance
34 for them through competent religious leaders but they, too,
35 decided that they didn't have a future together. They
36 thought that the whole project had been too much damaged by
37 what had happened and they decided to disperse.
38

39 Q. How many were there when it was first established?

40 A. I don't think there were ever more than about 20, 25.
41 It never reached a larger number than that, I think.
42

43 Q. How many were convicted of sexual offences?

44 A. Three.
45

46 Q. And the others left of their own accord during that
47 period of time, the early '90s, and there were five or six

1 left when you closed it down?
2 A. That's right, yes.
3
4 Q. What did you have to do in order to close it down?
5 A. I had to write to someone in the Vatican - I think the
6 head of the Congregation of Religious it is. All religious
7 societies, even those that are of diocesan right, are
8 somehow registered and recognised there as existing, so
9 I think I had to write to a Cardinal there and get approval
10 for its dispersal, and he granted that.
11
12 Q. What reason did you give?
13 A. I think I gave the breakdown of the religious life and
14 its standards in the community.
15
16 Q. In a negative sense?
17 A. Yes.
18
19 Q. By reference to the convictions or charges?
20 A. Yes, yes, that's what I - I didn't - I don't know that
21 I used those terms exactly, but that's the sort of thing
22 I had in mind, yes.
23
24 Q. So the reason you closed the Society down was that
25 there were allegations against many of the 20, and three
26 were convicted or were charged at the time?
27 A. No, I don't think - I'm not aware there were any
28 allegations against any others besides the three.
29
30 Q. I see.
31 A. Yes, but the whole incident, as you can imagine, had
32 affected everyone in the Society. Even those who initially
33 were sceptical and very critical of me for taking the
34 measures I did, because they just didn't believe it
35 happened, even they eventually became disillusioned with
36 the history of which they had been a part and didn't want
37 to be any further part of it, really.
38
39 Q. So the three who had been convicted - Joseph Pritchard
40 was one?
41 A. That's right.
42
43 Q. And he was a senior member of the Society?
44 A. He wasn't one of the founding ones. As far as
45 I recall, Brother John Sweeney gathered a few around him to
46 begin with. I'm not sure at what stage Joseph Pritchard
47 joined them, but he wouldn't have been one of the first

1 group, I don't think.
2
3 Q. Brother Sweeney, who was also convicted, he was, as
4 you say --
5 A. John Sweeney.
6
7 Q. -- a founder of it?
8 A. Yes.
9
10 Q. Who was the third one?
11 A. The third one was Stephen Robinson.
12
13 Q. He was a senior member as well?
14 A. Yes.
15
16 MS FURNESS: Thank you, your Honour, I have nothing
17 further.
18
19 THE CHAIR: Does anyone else have any questions? Mr Gray?
20 Anyone else? Yes, Mr Gray.
21
22 <EXAMINATION BY MR GRAY:
23
24 MR GRAY: Q. Bishop Heather, as you know, my name is
25 Gray and I represent the Truth, Justice and Healing Council
26 and the Diocese of Armidale and the Diocese of Parramatta.
27 Yesterday, at one stage, in relation to Farrell, you were
28 asked some questions about the time at which he initially
29 came to your diocese and found himself at Kenthurst. Do
30 you remember that?
31 A. Yes.
32
33 Q. There were some questions about what balancing of
34 factors you may have engaged in or should have engaged in
35 in terms of whether you should or shouldn't have accepted
36 him when Bishop Manning asked you to. Do you remember
37 that?
38 A. Yes. Bishop Kennedy.
39
40 Q. I beg your pardon, Bishop Kennedy?
41 A. Bishop Kennedy.
42
43 Q. My mistake, Bishop Kennedy. I just want to check with
44 you that I've understood your evidence correctly in terms
45 of what you knew at this time - that is, mid to late 1989,
46 just before he went to Kenthurst - about his previous
47 history. You knew that there had been a charge or charges

1 against him which had come to court in Narrabri?
2 A. I did, yes.
3
4 Q. And that, as you were told, is that right, was by one
5 complainant or one victim?
6 A. I don't recall exactly whether it was one or more.
7
8 Q. And you were told by Bishop Kennedy that Farrell had
9 been acquitted?
10 A. That's right.
11
12 Q. Was it your understanding, then, that the charges,
13 whatever they were, against him had been found by the court
14 to be unfounded or disproved?
15 A. That was my understanding at the time, yes.
16
17 Q. So your understanding - which we all know now turns
18 out not to have been right - was that Farrell was innocent
19 of those charges?
20 A. That's how I saw him at that time, yes.
21
22 Q. You also were told by Bishop Kennedy that a
23 psychologist had given him a clearance, as it were?
24 A. Yes.
25
26 Q. That he was suitable to be deployed in a parish?
27 A. Yes, yes.
28
29 Q. And you were also told by Bishop Kennedy that he,
30 Bishop Kennedy, considered him appropriate and suitable for
31 appointment?
32 A. That's right, yes, that he'd made a great recovery, if
33 I remember the words rightly, and that he hoped to have him
34 back in the diocese in 12 months.
35
36 Q. At that time - is this right - you had no knowledge
37 then of there ever having been any other complaints or
38 concerns about Farrell by a number of boys back in 1984?
39 A. No, I had no idea of that.
40
41 Q. All you knew about was the one set of charges which
42 had been dismissed, as you were told?
43 A. Yes. I learned of the other events through the
44 Whitlam Report.
45
46 Q. Yes. At the time you appointed Farrell or accepted
47 him into the diocese in 1989, in your mind, there was no

1 question or possibility of his being a paedophile; is that
2 right?

3 A. Well, "possibility" is throwing a fairly wide sheet
4 out, but, no, I didn't consider he was a paedophile, no.
5 It's very difficult for us now, I suppose, when we're
6 dealing with a person who is a convicted paedophile and
7 faces further charges in the future, over whom there have
8 been several inquiries - difficult for us to recognise
9 that. But at that time, in 1989, I regarded him as an
10 innocent person, yes.

11
12 Q. Also at the time, just in relation to paedophiles or
13 paedophilia generally, you've given some evidence yesterday
14 about the general extent of your knowledge on that sort of
15 subject then as opposed to now. One of the things that you
16 understand now - is this right - but did not know then was
17 the compulsive or repetitive facet of paedophile behaviour?

18 A. Well, that's true, yes. I think all of us have come
19 to know a lot more about this condition than we knew,
20 perhaps, then. Certainly I have, I should put that:
21 I have come to know a lot more about it, yes.

22

23 Q. So there is a general awareness now, and perhaps has
24 been for a while, that if someone has abused a child, one
25 child, there is a strong likelihood that he has abused more
26 than one and will abuse more than one?

27 A. Yes.

28

29 Q. Is that something that you were conscious of in 1989?

30 A. Oh, certainly not, no, but I've become conscious of
31 that now.

32

33 Q. And another thing that people have become much more
34 aware of, certainly by now, is the terrible nature and
35 extent of the likely damage to a victim, including the
36 long-lasting aspects of that damage, of sexual interference
37 by an adult. Is that something that you were conscious of
38 then?

39 A. No, I wasn't conscious of it then, but I'm very
40 conscious of it now, and of course it was reinforced by
41 what I heard earlier this week, here.

42

43 Q. Moving to a different topic, I wonder if tab 80 could
44 be called up, please. This is minutes of the Consultants
45 meeting of 22 November 1989 and it is on the second page,
46 about two-thirds of the way down. You were asked about
47 this entry which reads:

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As a result of discussions, Bishop Bede [said] that Father John Farrell has now been appointed for one year ...

to Kenthurst. Yesterday afternoon you said you thought that phrase, "As a result of discussions", referred to discussions with Father Dixon?

A. Yes.

Q. Do you remember saying that?

A. Yes, that's right.

Q. Might it have referred to discussions with Bishop Kennedy?

A. That's possible, yes. I don't have any recollection of that but it's possible.

Q. Could we have tab 99, please. You might take a moment to read this. This is a letter from Father Peters of Armidale to Bishop Kennedy of Armidale on 23 October 1990. Could it be scrolled down so the Bishop can read it. You can see that Father Peters is telling Bishop Kennedy about discussions with Father Usher, about the recommendation of "Dr Brazinski" and so on?

A. Yes.

Q. Do you see in the first paragraph "a professional person to give a second opinion about Farrell"?

A. Yes.

Q. Did you ever either see that letter or were you told about its contents?

A. No, I had no knowledge of that at all.

Q. We have in the tender bundle various other documents which show correspondence between Bishop Manning and Farrell in 1991-92 about getting a second opinion, that is from someone other than Mr Boyle. Were you ever aware of any such discussions or proposal?

A. No, I was not aware of those discussions.

Q. Could we have tab 147, please. This is Bishop Manning's note of a conversation with "Professor Brazinski" on 12 June 1992. Could you take a moment to read that and see what "Professor Brazinski" was telling Bishop Manning?

1 A. Yes, I see the part of that letter made available
2 there.
3
4 Q. Yes. In particular, the two paragraphs starting "To
5 paint a true picture"?
6 A. Yes.
7
8 Q. You've just read those. Were you aware or were you
9 told by anyone of the contents of what that note records?
10 A. I was not, no.
11
12 Q. As it happens, mid-June 1992, this is just after you
13 had heard from Father Arcamone about his concerns about
14 Farrell in Merrylands; is that right?
15 A. Yes, that's right, almost contemporaneous.
16
17 Q. Almost. You acted, as we've heard, in response to
18 those concerns, the Father Arcamone concerns - you took
19 action in response to that?
20 A. I did, yes.
21
22 Q. That was without knowing anything about
23 Dr Blaszczyński's views?
24 A. It was, yes. Yes.
25
26 Q. Finally, you were asked some questions this morning
27 about the letter to Mr Kohn of Makinson & d'Apice,
28 exhibit 44-008.
29 A. Yes.
30
31 Q. Could we have that on the screen, please. In the
32 second paragraph you start off by telling Mr Kohn that you
33 did inform CCI officially of potential claims in regard to
34 this case, being the Cattell case; is that right?
35 A. Yes.
36
37 Q. Then you go on to say:
38
39 What we were asked to do at the time was to
40 write to Father Peter Connors of the
41 Professional Standards Committee ...
42
43 I will come to the rest of that sentence, but pausing
44 there, you say, "This I did" - that is, write to
45 Father Peters Connors - you think in 1994. Do you have a
46 memory of writing to Father Peter Connors about some such
47 matter?

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MS FURNESS: Your Honour, I note that my friend appears for the Diocese of Armidale and the Diocese of Parramatta and the Truth, Justice and Healing Council. I ask on whose behalf he's asking these questions.

MR GRAY: I'm asking the questions, for the moment, on behalf of the Council, because I've been given to understand that counsel who is here representing Bishop Heather personally in relation to the St Gerard Majella matter is not briefed with information about the Cattell matter.

MR AINSWORTH: That is correct, I have no information about the Cattell matter.

THE CHAIR: It is an odd Chinese split, but I'm not going to say anything more.

MR GRAY: It has occurred this morning, your Honour. My questions will take another minute or so. I won't be pressing this.

THE CHAIR: Very well.

MR GRAY: Q. Do you remember that you did write to Peter Connors?

A. No, I don't remember that. It's many years ago. I don't recall that.

Q. Very good. Let me just ask you this then, cutting to the chase: in the second-last sentence you refer to destroying certain papers. First of all, do you have any recollection at all as to what sort of quantity of papers were involved?

A. I think it's a very loose sentence that I've written there, and I must apologise for that. I haven't written that as carefully as I should have done. No, we didn't go through any shredding process in the diocese, but following the carrying out of the warrant, I did become very nervous about the diocesan files.

Q. You were asked this morning about the criteria or criterion that you used to think about what might be destroyed or not kept, and you used the word "confidentiality"; do you remember that?

A. Yes.

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Q. Did that criterion or those criteria relating to confidentiality include destroying documents because they might indicate some possibility of criminal behaviour with minors?

A. No, not at all, not where minors were concerned, no.

THE CHAIR: Q. Bishop, I don't quite understand. This morning you told me you didn't recall what you destroyed, but you now seem to have recall?

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

Q. But the discussion this morning was about the documents you destroyed as soon as the police had conducted their raid. Do you understand? That's what this letter is talking about, too.

A. Yes. Well, it's a very loose sentence, I must admit, and I apologise for that.

Q. It seems pretty clear, Bishop - and we discussed this before the break. You see, at the moment the position seems to be that you've destroyed documents that might say something which would be adverse to an individual and, thereby, you saw that as necessary to protect the confidentiality of that material?

A. Yes.

Q. That would include potential criminal offences, wouldn't it?

A. It could, yes.

Q. Yes. It's plain that that was one of the matters, isn't it, that you were concerned not to have a record of?

A. I accept your assessment, your Honour.

MR GRAY: Q. Were criteria that you had in mind matters such as where a document recorded some private matter referable to alcohol or depression or those kinds of matters?

A. Matters of that sort, yes.

Q. Do you recall that being the principal concern that you had?

A. The principal concern was the confidentiality, yes - that people would write to me on a confidential basis,

1 sometimes include a medical report to support their
2 assessment or their request to take leave for a time, and
3 they were very confidential disclosures.
4

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

8 A. The matters of the CCI, yes, they were.
9

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

11 A. Yes.
12

13 MR GRAY: Q. Just on that, though, not cavilling with
14 that, you, according to this letter, had provided the
15 information relevant to this matter to Father Connors so
16 that he could provide it to CCI?

17 A. That's right, yes.
18

19 Q. Yes?

20 A. That's right, yes.
21

22 MR GRAY: I have nothing further.
23

24 MS GERACE: There are just a couple of issues that arise
25 in response to the questioning by Mr Gray in relation to
26 Bishop Manning; may I --
27

28 THE CHAIR: Yes.
29

30 <EXAMINATION BY MS GERACE:
31

32 MS GERACE: Q. My name is Gerace and I represent
33 Bishop Manning?

34 A. Yes.
35

36 Q. I just wanted to ask a few questions. One is this:
37 your evidence was that as at September 1990 you had become
38 nervous about Farrell's placement in your diocese. Do you
39 recall giving that information?

40 A. I do, yes.
41

42 Q. In April 1991, at the Bishops Conference, a
43 presentation was made in relation to a new protocol then
44 being implemented by the church for dealing with matters of
45 this sort; correct?

46 A. Yes, I think so, yes.
47

1 Q. The records indicate that you attended the Bishops
2 Conference at that time, in April 1991?
3 A. I did, yes.
4
5 Q. So you were aware, as at April 1991, that matters of
6 concern to you could be taken to the Special Issues
7 Committee?
8 A. Yes.
9
10 Q. And also as at April 1991, that the church's protocol
11 at that time was for those matters to be centrally managed;
12 correct?
13 A. Was?
14
15 Q. To be centrally managed?
16 A. Centrally managed?
17
18 Q. Centrally managed?
19 A. I see. Yes, I was aware of what took place at that
20 conference, yes.
21
22 Q. I'm just asking whether one of the matters that was
23 raised by this new approach by the church was that the
24 church was exhorting its Bishops to take those matters to
25 the special committee who had the relevant expertise in
26 order to know how to respond to them; correct?
27 A. That would be correct, yes.
28
29 Q. You were asked about whether you were aware of a
30 conversation between Bishop Manning and
31 Professor Blaszczyński, which was the document at tab 136 --
32 A. Yes.
33
34 Q. -- on 15 April 1992. That sort of information coming
35 to an ordinary would be the very sort of information that
36 should be taken by the Bishop to that committee; would you
37 agree with that? Tab 135. My apologies. That was the
38 conversation had by Bishop Manning with --
39 A. With Professor Blaszczyński.
40
41 Q. -- Professor Blaszczyński?
42 A. Yes.
43
44 Q. Receiving that sort of information, that is the type
45 of information that the Bishop was required, under the new
46 protocol, to take to the Special Issues Committee?
47 A. Yes, advised or required.

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Q. Yes.

A. Advised, perhaps, yes. Not required, I think, advised.

Q. In any event, if we then look at tab 136, did you then, as at that date, recognise that Brian Lucas was one of the members of that committee?

A. Yes, I knew that Father Brian Lucas was a member of that committee.

Q. I'll leave that questioning. Finally, you were asked the following, that at the time you received the information in or about June of 1992 when you terminated Farrell's ability to --

A. Terminated his appointment?

Q. Yes, his appointment - you were asked some questions about the withdrawal of his faculties by Bishop Manning. In fact, one of the other things at the time was that Father Farrell was planning to travel, wasn't he, and go on holidays?

A. He was, yes.

Q. And the Bishop's withdrawal of his faculties would, as far as the Bishop was able, ensure that he should not be able to practise as a priest anywhere else whilst he was travelling?

A. That's correct, yes.

MS GERACE: Thank you.

THE CHAIR: Does anyone else have any questions?
Ms Furness?

MS FURNESS: Nothing further, your Honour.

THE CHAIR: Yes, very well, thank you Bishop, that concludes your evidence. You're excused.

THE WITNESS: Thank you.

<THE WITNESS WITHDREW

MS FURNESS: Your Honour, I call Bishop Luc Matthys.

MR SKINNER: Your Honours, I and those who instruct

1 me have now been asked to appear for Bishop Matthys. As
2 presently informed from the tender bundle and the
3 conferences I've had with him, we don't perceive any
4 conflict with my other client, Father Lucas. I believe a
5 written application for a leave to appear was sent
6 yesterday.

7
8 MS FURNESS: I have no objection to leave being granted.

9
10 THE CHAIR: I give you leave. You keep your eyes open if
11 any problem emerges.

12
13 MR SKINNER: Thank you, your Honour.

14
15 <LUC JULIAN MATTHYS, sworn: [12.28pm]

16
17 <EXAMINATION BY MS FURNESS:

18
19 MS FURNESS: Q. If you have any difficulty hearing,
20 Bishop, will you make it clear?

21 A. I have intermittent, yes, difficulty to hear, but
22 I can hear you now, yes.

23
24 Q. If you need a short adjournment for any reason, please
25 tell us.

26 A. Yes, okay.

27
28 Q. Your full name?

29 A. My full name is Luc Matthys.

30
31 Q. What are you currently doing, Bishop?

32 A. I'm - well, they call it Emeritus Bishop of Armidale.

33
34 Q. You were first ordained as a priest in South Africa?

35 A. Correct.

36
37 Q. You were incardinated in Melbourne in 1976?

38 A. That would be right.

39
40 Q. You went to Armidale as a Bishop soon thereafter?

41 A. No. In 1999 I was appointed Bishop of Armidale.

42
43 Q. Thank you. What did you do between 1976 and 1999?

44 A. I worked as a priest in the Archdiocese of Melbourne.

45
46 Q. For that entire time?

47 A. Pardon?

1
2 Q. For that entire time?
3 A. Yes.
4
5 Q. You were appointed Bishop of Armidale when?
6 A. I was appointed in March 1999 and ordained a Bishop in
7 May 1999.
8
9 Q. Who was your predecessor as Bishop?
10 A. Where?
11
12 Q. At Armidale?
13 A. There wasn't a Bishop there when I was appointed.
14
15 Q. Who was there?
16 A. It was a vacant diocese and Monsignor Frank Ryan was
17 the administrator.
18
19 Q. Do you know how long he had been administrator before
20 you arrived?
21 A. Just short of two years.
22
23 Q. He took over from Bishop Manning; is that right?
24 A. Well, I don't know about taking over. Bishop Manning
25 was told to go to Parramatta, I understand, and in that
26 event there was no Bishop, so the administrator had to be
27 appointed.
28
29 Q. So he was the next person in the Armidale Diocese,
30 running it, after Bishop Manning?
31 A. That would be correct, yes.
32
33 Q. You were Bishop of Armidale for some 12 years?
34 A. Yes.
35
36 Q. And then you retired?
37 A. Well, I tendered resignation to the Holy Father, the
38 Pope, at my 75th birthday, as required by church law, and
39 within a month I got a letter back to say I was to continue
40 until they made other arrangements. The technical term is
41 nunc pro tunc. So I remained Bishop of Armidale until the
42 next appointment came.
43
44 Q. How long was that?
45 A. Oh, well, now --
46
47 Q. Months?

1 A. It was more than months.
2
3 Q. Years?
4 A. That's terrible. I can't think. No, I think the
5 current Bishop, Michael Kennedy, was appointed, and I think
6 it might have been in 2012.
7
8 Q. When you were appointed, when did you first hear of
9 Father John Joseph Farrell?
10 A. Oh, only when I got to Armidale. I'd never heard of
11 JJ Farrell before.
12
13 Q. What did you hear when you got to Armidale?
14 A. I'm sorry?
15
16 Q. What did you hear when you got to Armidale?
17 A. Well, when I came to Armidale, one of the first things
18 I did was to issue faculties to the priests who were
19 administering priestly functions in the diocese. There
20 were a few people there who didn't belong; they had just
21 parked themselves there. So I did not issue faculties to
22 JJ Farrell, because I'd been told there were things against
23 him, and by then I had learned that they had tried to
24 laicise him but that didn't go on, so of course I asked why
25 they wanted to laicise him and I was told various things.
26
27 Q. When you say you were told various things, was that by
28 previous office holders in the diocese or others?
29 A. Oh, probably by the people in the Chancery Office.
30 I can't remember who told me.
31
32 Q. Do you remember now what you were told?
33 A. I'm sorry?
34
35 Q. Do you remember now what you were told about him,
36 about Farrell, when you arrived?
37 A. That I was what, I am sorry?
38
39 Q. Told?
40 A. What I was told?
41
42 Q. Yes.
43 A. Well, that they had tried to laicise him.
44
45 Q. Did they tell you why?
46 A. Yes. Because - they said that he was - had been
47 fiddling and playing with young boys, et cetera, et cetera,

1 and that complaints had been received, et cetera.
2
3 Q. At the time that you began, he had his faculties
4 removed; is that right?
5 A. No, I didn't use that term. I said I didn't issue him
6 faculties.
7
8 Q. I understand that. I'm asking you whether at the time
9 you began as the Bishop of Armidale, he had had his
10 faculties withdrawn?
11 A. I don't know that.
12
13 Q. If you were considering whether or not you would
14 restore his faculties, they must have been withdrawn, must
15 they not?
16 A. Well, I don't use the term to "restore his faculties",
17 I just did not issue faculties to him and some other
18 priests who were in the diocese.
19
20 Q. But if he had his faculties there would be no question
21 of --
22
23 THE CHAIR: No, I'm not sure. There may be something
24 we're missing here.
25
26 Q. Do I assume, when you became the Bishop, then it was
27 incumbent on you to issue faculties to all of those in the
28 diocese who were serving as priests, if you chose to?
29 A. Oh, yes.
30
31 Q. But that's what a new Bishop does; is that right?
32 A. Well, I did, I don't know what other Bishops do.
33
34 Q. But you did. So you issued faculties to every priest,
35 but for those you didn't want to issue faculties to?
36 A. Well, you could put it that way, proceeded with a few
37 other priests who had parked themselves there because they
38 either didn't get on where they were or they thought it was
39 better to be there, and so on.
40
41 Q. So you left them off your list, too?
42 A. That's right.
43
44 MS FURNESS: Q. So was Father Farrell living in your
45 diocese at the time when you arrived?
46 A. I think so, yes.
47

1 Q. Was he doing anything of a priestly nature that you
2 knew of?
3 A. No.
4
5 Q. Did you know what his status was as a priest?
6 A. I'm not sure I understand your question.
7
8 Q. He was a priest of the diocese?
9 A. Yes.
10
11 Q. What did that mean he could and couldn't do?
12 A. Well, he had no faculties.
13
14 Q. I understand that, that's why I'm asking you: what
15 could he not do and what could he do?
16 A. He could not function publicly as a priest.
17
18 Q. What does "function publicly" mean?
19 A. Well, saying mass and hearing confessions and
20 visitations and that sort of thing.
21
22 Q. Was there anything he could do as a priest without his
23 faculties?
24 A. Well, he could say private mass at home if he wanted
25 to.
26
27 Q. He could wear his priestly garb?
28 A. What do you mean by "priestly garb".
29
30 Q. His priestly clothing?
31 A. You mean this sort of a thing (indicating)?
32
33 Q. Well, if that's the only thing that is worn by a
34 priest, yes?
35 A. Yes, if he wanted to. Why not?
36
37 Q. Well, I'm asking you, Bishop: he could wear that?
38 A. Yes, he could do that.
39
40 Q. And he could call himself a priest?
41 A. Oh, yes, he was.
42
43 Q. Thank you. There were various events or incidents
44 concerning Father Farrell during your time as Bishop that
45 I wish to take you to. There is a screen in front of you.
46 If you wish to see a hard copy I will provide you with one.
47 A. Let's try this first.

1
2 Q. Perhaps if we can have tab 220 on the screen. This is
3 a letter from the Diocesan Director of Catholic Schools to
4 Farrell in March 2000 telling him that he did not have
5 permission to enter Catholic schools for the purpose of
6 assisting teachers and students with projects. Do you see
7 that?
8 A. Yes.
9
10 Q. Did that come to your attention, that he was doing
11 such things?
12 A. Oh, yes, I was all in favour of that.
13
14 Q. You were in favour of what?
15 A. That that letter be issued.
16
17 Q. So you knew about it before the letter was issued?
18 A. I'm sorry?
19
20 Q. You were consulted before the letter was issued?
21 A. I don't remember that. Where does --
22
23 Q. The letter says you were consulted. You would accept
24 that you were, I take it, Bishop?
25 A. Well, I probably was. I don't know.
26
27 Q. Was it the case that entering Catholic schools for
28 that purpose was something that he could do,
29 notwithstanding his faculties were withdrawn?
30 A. Well, he should have - he should have understood that.
31
32 Q. So that what he was doing was inconsistent with his
33 faculties having been withdrawn; is that right?
34 A. But it doesn't say that he did go to schools.
35
36 Q. It is clearly the case that the permission wouldn't
37 have been withheld unless there was an occasion when he did
38 such a thing. Do you accept that?
39 A. I'm sorry, I'm not quite sure of your question.
40
41 Q. I am suggesting to you that the reason this letter was
42 written was because he did enter Catholic schools for the
43 purpose set out in the letter.
44 A. Oh, yes.
45
46 Q. My question to you is: having entered Catholic
47 schools in the diocese for the purpose set out in the

1 letter, is that consistent or inconsistent with his
2 faculties having been removed?
3 A. I didn't remove his faculties; he didn't have
4 faculties.
5
6 Q. That's my point, he didn't have faculties. You
7 understand they were removed by your predecessor,
8 Bishop Manning. Do you understand that?
9 A. Yes.
10
11 Q. My question is whether or not the event that's
12 described in this letter, that is, entering Catholic
13 schools, was something that he had done prior to this
14 letter being issued? Do you know if --
15 A. Well, I suppose so.
16
17 Q. My question is then is it the case that entering
18 Catholic schools for that purpose was consistent or not
19 consistent with him not having faculties?
20 A. Not necessarily.
21
22 THE CHAIR: Q. I take it any layperson could offer and
23 be accepted to assist teachers in relation to teaching of
24 religious matters in schools; would that be right?
25 A. I'm sorry, I didn't quite hear that properly. I --
26
27 Q. Any layperson could offer their assistance to help
28 with religious instruction in schools?
29 A. Well, yes.
30
31 Q. Yes. In acting in this way he didn't need faculties,
32 he was just acting as any other member of the public might
33 do?
34 A. He could, yes.
35
36 Q. Yes, but what the director was saying was he should
37 not do this?
38 A. That's right.
39
40 MS FURNESS: Q. And I take it he should not do it
41 because it provided him with access to children?
42 A. You could put it that way, I suppose, but it means he
43 had contact with people and, as we know from his general
44 history, it has been described here several times, you
45 know, he made contact with people, get to know them and
46 then later on he would contact them privately and all this
47 sort of thing.

1
2 Q. Can I show you tab 223. This is an email from you to
3 Farrell in July 2000 and in that email you were wondering
4 whether he might make himself available to go to a week's
5 course in Sydney. Do you see that?
6 A. Yes.
7
8 Q. Was that a course of treatment?
9 A. I'm trying to think. In - the UNE --
10
11 Q. It is referred in another email to a week's
12 orientation course; does that help?
13 A. It probably was that, yes.
14
15 Q. Treatment?
16 A. No. No, no, no.
17
18 Q. Orientation as to what?
19 A. Well, there were various courses being given to bring
20 priests up to date to make them available to deal with
21 people in consultation or in - yes, and that sort of thing.
22
23 Q. Even though he didn't have faculties in your diocese,
24 you were involving him in the work of the church to the
25 extent that you wanted him to go to an orientation course
26 to assist him in dealing with people?
27 A. To take a course is not a question of approving of the
28 man.
29
30 Q. I am not suggesting it is, but he was sufficiently
31 involved in the work of your diocese for you to ask him to
32 attend an orientation course which, as you say, enabled him
33 to deal with people in consultation and that sort of thing?
34 A. Yes, if I asked him to do that sort of work.
35
36 Q. You did ask him to do it; you asked him to do the
37 course?
38 A. To do the course, yes.
39
40 Q. Presumably, that cost money from the diocese?
41 A. Pardon?
42
43 Q. Presumably, that cost money that the diocese paid?
44 A. Oh, probably; I can't say.
45
46 Q. Coming over to tab 228, this is a letter that was
47 written by a person who has a pseudonym, Bishop, and

1 there's a list in front of you which sets out the names of
2 people with pseudonyms. Please be careful not to use the
3 name and use only the pseudonym. This letter was written
4 by [CPD]. If you look on the pseudonym list on the table
5 in front of you, you'll see who [CPD] is. Do not read out
6 his name. You understand who [CPD] is; is that right?
7 A. I'm sorry? Yes, I do, yes, yes.
8
9 Q. This is a letter from him addressed to Reverend Pell
10 and copied to you?
11 A. I don't know about that. I don't remember seeing a
12 copy of it.
13
14 Q. No. Do you see that it is ccd to you, at the top of
15 that page?
16 A. Yes, but I can't remember - I don't remember getting
17 that letter.
18
19 Q. You've read it, I take it?
20 A. Mmm?
21
22 Q. You've read it?
23 A. I can't say. You mean now, today or --
24
25 Q. To have said that you have can't remember getting it
26 you must know what the letter says. Have you read this
27 letter before?
28 A. No.
29
30 Q. You haven't?
31 A. No.
32
33 Q. Well, then, how can you say you didn't get it?
34 A. Because of what it - it just rings no bell in my head
35 at all that I saw this letter.
36
37 Q. You've only seen the first paragraph. Do you want to
38 see the rest of the letter, Bishop? It is a letter of
39 complaint --
40 A. Yes.
41
42 Q. -- from [CPD] describing the sexual abuse he suffered
43 from Farrell from 1982 to 1984.
44 A. Yes.
45
46 Q. Do you remember getting that letter?
47 A. No, I don't remember getting that letter.

1
2 Q. Could we go to the last page. [CPD], in the last full
3 paragraph, says that he's prepared to meet with
4 Reverend Pell, as he describes him, or an appropriate
5 person, to discuss his situation. You don't recall that
6 letter?
7 A. No, I don't recall this letter.
8
9 Q. I beg your pardon?
10 A. I don't recall this letter.
11
12 Q. Could I ask that tab 232 be placed on the screen.
13 This is a letter to [CPD] dated July 2002. If we go to the
14 second page of the letter, that's your signature, isn't it?
15 A. Yes.
16
17 Q. Do you remember writing to [CPD]?
18 A. This particular letter?
19
20 Q. Yes.
21 A. Well, I must have, yes.
22
23 Q. Could we go back to the first page. You refer in that
24 second-last paragraph to - if we can have that on the
25 screen - that Farrell had been forbidden to act as a priest
26 since about 1992 and lives privately. Do you see that
27 there?
28 A. Yes.
29
30 Q. Then you indicate that you were prepared to meet with
31 [CPD]: that's the next paragraph.
32 A. I'm sorry, I didn't quite hear your question?
33
34 Q. The next paragraph says that you were prepared to meet
35 with [CPD]?
36 A. Yes.
37
38 Q. Do you remember meeting with [CPD]?
39 A. Yes.
40
41 Q. What do you remember about the meeting?
42 A. Well, he came with his mother.
43
44 Q. Is that all you remember about the meeting, that he
45 came with his mother?
46 A. No. No. Well, I mean, we discussed the accusations
47 he made.

1
2 Q. And?
3 A. How do you mean "And?" What?
4
5 Q. I have asked you what you remember about the meeting
6 and you have said he came with his mother?
7 A. Yes.
8
9 Q. And you said, "We discussed the accusations he made"?
10 A. Yes.
11
12 Q. Is there anything else you remember about the meeting?
13 A. Not off the top of my head now; maybe I should
14 remember something; I don't know.
15
16 Q. Was that the first time you had heard directly from a
17 victim of Farrell about what he had done to them?
18 A. Yes.
19
20 Q. What was your reaction to that, Bishop?
21 A. How do you mean my "reaction"? To what? To what --
22
23 Q. What was your reaction to having heard directly from a
24 victim of Farrell about what he had done to them, for the
25 first time?
26 A. Well, I just took it in that these things happened and
27 had happened here.
28
29 Q. I'm sorry? You just took it these things had happened
30 and had happened here.
31 A. Yes.
32
33 Q. What do you mean by that?
34 A. In this case, with this [CPD].
35
36 Q. "These things" - by that you mean the sexual abuse of
37 this person by Farrell?
38 A. In general, sexual interference with young people,
39 yes.
40
41 Q. So that happened and it just so happened to this
42 person?
43 A. Well, it happened to this person. I've heard of these
44 things before in other parts of the world.
45
46 Q. That was your reaction to having heard it?
47 A. How do you mean "reaction"?

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Q. I'm asking you how you reacted to having heard that account and you say that you'd heard these things in other parts of the world and it happened to this person. Is that the extent of your reaction to it?

A. Well, no, my further reaction, I made certain suggestions to [CPD].

Q. What suggestions did you make to [CPD]?

A. Well, I forget now. That should be in the letter somewhere because there's a - there's another letter in which I suggest he go for treatment, if you like, or therapy and so on.

Q. Perhaps if we can have 235A on the screen. This is headed "Draft Letter" at the top. You have signed it, I think, at the bottom, and then there are two lines through paragraph 2. Do you see that?

A. Mmm-hmm.

Q. Do you remember drafting this letter?

A. I'm sorry, did I --

Q. Draft the letter?

A. I suppose I did. I can't remember whether I drafted it or whether I'd helped to draft it.

Q. Do you see in paragraph 2 you refer to:

You seek monetary compensation. Whereas you seem to have satisfied yourself that compensation is due to you, you have in no way established to my satisfaction that I as Bishop should pay you compensation.

Do you see that?

A. Yes.

Q. "Why don't you make a claim against the man who abused you?"?

A. Yes.

Q. Then you refer to:

Should you bring yourself to take the matter of abuse to the Police, the compensation matter will become clearer.

1
2 A. Yes.
3
4 Q. This is in 2002. Was it your approach in 2002 that it
5 was necessary for a person to establish, to your
6 satisfaction, as a Bishop, that you should pay them money?
7 A. What do you mean by "paying money"?
8
9 Q. Paying compensation, as you have set out in this
10 draft, or this draft has set out and you've signed it?
11 A. Towards Healing does not mention compensation.
12
13 Q. I beg your pardon?
14 A. The Towards Healing document.
15
16 Q. The document talks about compensation?
17 A. Which document?
18
19 Q. The document is on the screen in front of you?
20 A. Well, exactly. I'm saying to you that the document,
21 Towards Healing, does not mention compensation.
22
23 Q. I am not talking about Towards Healing, Bishop. I am
24 talking about this letter that you have signed in draft
25 form?
26 A. Well, what - I don't want to discuss compensation with
27 him.
28
29 Q. You didn't want to discuss compensation with him?
30 A. Yes, because it's not in Towards Healing that that's
31 something to do.
32
33 Q. So you say that the draft letter referred to
34 compensation and then you removed it because it was a
35 matter for Towards Healing rather than for you; is that
36 what you're saying?
37 A. That's right.
38
39 Q. If we go to 235, this is a letter that was sent in
40 that it is not in draft form. Then in paragraph 2 you
41 refer to him seeking monetary compensation and you urge him
42 to go to the police and you say, "I believe the
43 compensation matter may become clearer were you to do
44 this." Do you see that?
45 A. Yes.
46
47 Q. Was it your approach then that a police record or a

1 complaint to the police was necessary in order to consider
2 compensation?
3 A. I think I've already said that compensation is not
4 part of Towards Healing. Now, it's necessary, I think -
5 all right. I would always advise, if people come to me and
6 say, "I have been abused by Father and So", that they take
7 the matter to the police because there things will become
8 clearer as to who is responsible for what or what to do to
9 whom and so on.
10
11 Q. While you were --
12
13 THE CHAIR: Q. I am sorry, can I just understand that.
14 You say that when you were the Bishop, the approach you
15 took was that Towards Healing was not available as a
16 process for any survivor to be given compensation; is that
17 what you're saying?
18 A. Well, I'm saying Towards Healing doesn't mention
19 compensation.
20
21 Q. I just want to understand.
22 A. Yes.
23
24 Q. Are you also saying that before the church could
25 consider accepting responsibility for someone having been
26 abused, they needed to go to the police and there needed to
27 be a prosecution; is that what you're saying?
28 A. It's all part of the same process here. To go to the
29 police is terribly important in cases of this kind.
30
31 Q. I understand that, but I want to know what you were
32 thinking in terms of the church's responsibility. Are you
33 saying that the church would not accept responsibility for
34 any survivor having been abused, unless they went to the
35 police and there was a prosecution?
36 A. No. No. No. I think the process of assisting people
37 who have been through abuse starts much earlier than that,
38 but going to the police is part of it, a major part of it,
39 as far as I'm concerned.
40
41 Q. I understand that. At what point was the church, as
42 far as you were concerned, prepared to engage in a
43 Towards Healing process in relation to a survivor who came
44 to you?
45 A. Whatever - it talks about reparation, it talks about
46 counselling and all this kind of thing.
47

1 Q. Were you prepared to engage with someone in relation
2 to those matters if they hadn't been to the police?
3 A. Well, part of being engaged with them in these matters
4 would be to say, "It's important you go to the police, that
5 there's an official record of this."
6
7 Q. If the person says, "I don't want to go to the police.
8 I don't want to become involved with the criminal law", did
9 that mean, as far as you were concerned, they couldn't be
10 involved in the Towards Healing process?
11 A. Well, they can be, but they stymie the whole process.
12
13 Q. How would they stymie the process?
14 A. Because there's no official record with the police of
15 what happened or what they allege happened.
16
17 Q. That's what I was trying to work out. Are you saying
18 that until they've been to the police and, as you say,
19 there's a police record, then a person couldn't deal with
20 the church through the Towards Healing process?
21 A. Oh, yes, they can.
22
23 Q. So they didn't have to go to the police for the church
24 to be prepared to provide them with the opportunity to go
25 through Towards Healing?
26 A. A part of Towards Healing is to encourage people to go
27 to the police and report.
28
29 Q. I understand that but I just want to make sure we're
30 on the same track. If someone has been abused, did they
31 have to go to the police before, as far as you were
32 concerned, Towards Healing could help them and provide them
33 with compensation?
34 A. You see, that word "compensation" keeps on coming up.
35
36 Q. I need to understand what you were doing.
37 A. Towards Healing mentions all sorts of things, as I've
38 already said: counselling --
39
40 Q. Yes, I understand that --
41 A. But it does not mention the word "compensation".
42
43 Q. What do you understand it to mention in terms of
44 money?
45 A. But Towards Healing doesn't mention compensation.
46
47 Q. You don't think money was involved at all?

1 A. Did what?
2
3 Q. You don't think money was involved in the
4 Towards Healing process at all; is that what you're saying?
5 A. I still don't understand your question, I'm sorry.
6
7 Q. Are you saying that, as far as you understood it,
8 no-one could obtain any money through the Towards Healing
9 process?
10 A. Well, not from me.
11
12 Q. As far as you were concerned were you responsible for
13 the Towards Healing process in Armidale?
14 A. Yes.
15
16 Q. Anyone who was abused in Armidale could not get money
17 through you from the church; is that right?
18 A. Well, not in the way you describe it as, no, no, no.
19
20 Q. How could they?
21 A. How could they?
22
23 Q. Yes.
24 A. Well, you're making out that they have a right to
25 ask for --
26
27 Q. No, no, no, I'm just asking was there any means by
28 which they could get money from the church, if they'd been
29 abused by one of the priests in Armidale?
30 A. But why would they want to get money from the church?
31
32 Q. Because one of the church people, one of the ordained
33 members of the church, had abused them?
34 A. Oh, I see. Well, that to me is compensation.
35
36 Q. And as far as you were concerned, no-one could get it;
37 is that right?
38 A. That's correct.
39
40 THE CHAIR: I think we might take lunch now.
41
42 MS FURNESS: Yes.
43
44 LUNCHEON ADJOURNMENT
45
46 MS FURNESS: Q. Bishop, I understand we have got a new
47 arrangement for you to hear?

1 A. Yes, it's working really well.
2
3 Q. It is?
4 A. Yes.
5
6 Q. Good, thank you. If you have any difficulties, just
7 alert us.
8 A. I will raise my hand. Yes, thank you.
9
10 Q. Can I show you tab 239. It will come up on the
11 screen. This is a letter to you from the people running
12 Encompass in August 2003. Have you seen that letter
13 recently, Bishop?
14 A. I don't know about recently, but I'm aware of it.
15
16 Q. Encompass was the organisation that was established by
17 the church to provide treatment to priests who sexually
18 abused children, among others?
19 A. Yes. Well, first, examination to see whether there
20 were any problems about their health or their mental state
21 or whatever, yes.
22
23 Q. And you referred Farrell to Encompass for a report and
24 assessment?
25 A. Oh, yes, indeed.
26
27 Q. This is the report that you received back, in 2003?
28 A. Yes.
29
30 Q. If you go down to the second paragraph, there is
31 reference there to Mr Farrell stating he wished to gain
32 deeper insight into his offending behaviour. Do you see
33 that? It is the last two lines of the second paragraph.
34 A. Yes.
35
36 Q. And then in the next paragraph you are informed that
37 Mr Farrell continues to pose a serious risk to children and
38 adolescents. Do you see that in the second and third line
39 of that? And then in the next paragraph, there is
40 reference to his pattern of sexually abusive behaviour
41 being long-term?
42 A. Yes.
43
44 Q. And then the final paragraph on the first page, in the
45 last sentence, says:
46
47 Our concern is that Mr Farrell is

1 accountable to no one and continues to pose
2 an unacceptable risk to minors.
3
4 What did you do when you received that letter in relation
5 to Farrell?
6 A. I think I immediately started a process to laicise
7 him.
8
9 Q. I beg your pardon?
10 A. I think I immediately started a process to laicise
11 him. He must leave the priesthood.
12
13 Q. You did that in order for him not to be able to call
14 himself a priest and, by being a priest, have access to
15 children; is that right?
16 A. Well, yes, to get him out.
17
18 Q. I beg your pardon - "get him out"?
19 A. Well, yes.
20
21 Q. We know that the laicisation process occurred in 2005?
22 A. Yes.
23
24 Q. So it took a couple of years?
25 A. Well, in those days, you couldn't get a laicisation
26 done without the cooperation or knowledge of the person.
27
28 Q. I understand that.
29 A. So it took me a while to convince him that he needs to
30 come and talk to me, he has to tell his story, and
31 I listened to that and I wrote it all down and he came back
32 the next day and signed that this was a correct record of
33 our conversation and of his story.
34
35 Q. I understand that, but in the period between getting
36 this report and Farrell being laicised, did you put any
37 measures in place in order to ensure that he was in some
38 way accountable to the church and to minimise the risk that
39 he posed to minors?
40 A. Nothing comes to mind. I think he was quite well
41 aware that he wasn't to go to schools and all that sort of
42 thing.
43
44 Q. So you didn't, yourself, on your initiative, following
45 receipt of this document, put anything particular in place?
46 A. No, I think - I'm not sure whether that was already in
47 place but, you know, he was told not to go to schools.

1
2 Q. And that's the letter that I referred you to earlier?
3 A. Probably, yes.
4
5 Q. Anything else?
6 A. Well, I - not that I can recall at the moment, no.
7
8 Q. Do you see the reference to "Our concern is that
9 Mr Farrell is accountable to no one"? Was that the case in
10 the church, that given he didn't have faculties but was
11 still a priest, could call himself a priest and wear
12 priestly clothing, he was not accountable to the church?
13 A. I don't understand that sentence.
14
15 Q. Did you consider him to be accountable to you?
16 A. Oh, most certainly.
17
18 Q. Even though he didn't have faculties?
19 A. Yes.
20
21 Q. Because he was still a priest of the diocese?
22 A. That's right.
23
24 Q. Having received this, is there anything more you did
25 in relation to his accountability to you?
26 A. Not that I can recall.
27
28 Q. You were asked some questions before lunch about
29 compensation and money. Do you remember that?
30 A. Yes.
31
32 Q. While you were Bishop, there was a civil case brought
33 against the diocese. Do you remember that?
34 A. No, I would need some more reference to - some detail
35 to jog my memory.
36
37 Q. Certainly.
38 A. Sorry.
39
40 Q. Perhaps if I can show you document 248?
41 A. Okay.
42
43 Q. This is an affidavit by [CPE]. You will see on your
44 list in front of you who [CPE] is?
45 A. Yes, right.
46
47 Q. It is in relation to a case brought by [CPK], who was

1 a child relevant to the time of the subject matter of the
2 claim.
3 A. Mmm.
4
5 Q. Do you see those names down there?
6 A. Yes.
7
8 Q. Do you remember it coming to your attention in
9 2004/2005 that your diocese was being sued by somebody in
10 relation to child sexual abuse claims?
11 A. Not that I can recall now.
12
13 Q. No?
14 A. I - no, I don't recall this.
15
16 Q. Given the attitude that you have indicated to us that
17 you had in relation to the payment of moneys by the
18 diocese, it's certainly something that would remain with
19 you, wouldn't it, Bishop, that the diocese was being sued
20 by someone for child sexual offences or in relation to
21 child sexual offences that had occurred earlier?
22 A. I probably would have gone to the - to our diocesan
23 lawyer to ask what must I do here.
24
25 Q. And sought their advice?
26 A. Yes.
27
28 Q. Could we just have tab 248A? Bishop, these are
29 handwritten notes dated January 2005. Have you seen those
30 notes before?
31 A. Not that I can recall.
32
33 Q. Is the handwriting at all familiar to you?
34 A. No.
35
36 Q. Do you see there is reference to Rod Watt on the
37 phone, in the top line? Do you see, "Rod Watt on [phone]"?
38 A. Oh, sorry, yes, sorry, yes.
39
40 Q. Who was Rod Watt in 2005?
41 A. He was part of our legal representation. I mean,
42 we used his company, you know, when we needed advice on
43 this or any other matter for the law.
44
45 Q. Do you see the next line refers to Monsignor Peters?
46 A. Yes.
47

1 Q. He was a priest in your diocese at the time?
2 A. Yes. Yes.
3
4 Q. Did he have some particular responsibility in relation
5 to legal matters on behalf of the diocese?
6 A. Well, he was my expert canon lawyer.
7
8 Q. If we can scroll down the document and if we can stop
9 about there, there is reference to "We to talk re" and do
10 you see that word? I suggest it might be an abbreviation
11 of "contribution"?
12 A. It could be, yes.
13
14 Q. And then "Armidale file has lot of damaging material.
15 Want to settle"?
16 A. Yes.
17
18 Q. Do you see that?
19 A. Yes.
20
21 Q. Now, did it come to your attention around this time
22 that the lawyers were concerned about, as is described
23 here, the damaging material on the diocese's files?
24 A. Not that I can recall.
25
26 Q. No?
27 A. No.
28
29 Q. Were you involved in settlement decisions in relation
30 to this case? You were?
31 A. I think so, yes.
32
33 Q. And having seen this note, does that assist you to
34 recall what was said in relation to settlement negotiations
35 concerning this case?
36 A. I'm sorry, would you repeat that?
37
38 Q. Certainly. Having looked at this document --
39 A. Yes.
40
41 Q. -- written by the lawyer, or perhaps if we can scroll
42 up again, in relation to a telephone conversation with your
43 lawyer --
44 A. Yes.
45
46 Q. -- does that help you remember how the case was
47 considered by the diocese and how the settlement came

1 about?
2 A. I think a settlement was made in that instance or in
3 this particular case.
4
5 Q. Yes, yes, it was, Bishop, and your involvement in that
6 settlement?
7 A. I suppose I would be asked; I don't know.
8
9 Q. You don't remember it?
10 A. No.
11
12 Q. Do you see that there is a number of conversations
13 recorded. "28 January" appears to be for each of them; do
14 you see that?
15 A. What about this?
16
17 Q. There are a number of conversations that seem to be
18 dated 28 January that are recorded in the note?
19 A. There is one there, yes.
20
21 Q. And if you scroll down, there is a number of others?
22 A. Oh, okay.
23
24 Q. Could I then turn to tab 248B. This seems to be the
25 same handwriting, doesn't it?
26 A. Yes.
27
28 Q. It is dated 10 February and it refers to a telephone
29 conversation with Father Bob McGuckin. Now, he was
30 a priest of the Diocese of Parramatta, wasn't he?
31 A. That's right.
32
33 Q. You knew him from that time?
34 A. Oh, I knew him earlier than that, yes, because he was
35 also sent to Canada to do a degree in canon law.
36
37 Q. Perhaps we can go up further to the beginning of the
38 document. Is that the beginning of the document?
39 A. Yes.
40
41 Q. I think there is an earlier page. Is there another
42 page that is available to us? Perhaps you can go down to
43 the next page. That refers again to Father McGuckin?
44 A. Yes.
45
46 Q. Who we have spoken about. There are references to
47 status of offers and the like and how much Armidale may

1 contribute. Do you see that in the second paragraph? Do
2 you want some more time to read the document?
3 A. No, I can see that, yes.
4
5 Q. Then, scrolling down, there is reference to Rod Watt
6 on the phone, and he was your lawyer at this time?
7 A. Yes.
8
9 Q. And there is recorded there "Discussing offers", and
10 then the next line, "Speak to Monsignor Peters", and he was
11 the person who I think you have said was engaged in these
12 matters on behalf of the diocese.
13 A. Yes.
14
15 Q. Then, "He will seek an" - and I suggest that's an
16 abbreviation of "adjournment" - "Tomorrow because Armidale
17 documents under subpoena are 'dynamite'".
18 A. Right.
19
20 Q. Did that come to your attention?
21 A. I don't recall.
22
23 Q. Do you remember anyone telling you that the files held
24 by Armidale, in the context of this sort of litigation,
25 were damaging or dynamite?
26 A. I don't remember anybody telling me that.
27
28 Q. Was that a view that you had?
29 A. I don't know what document that's referring to.
30
31 Q. Was it a view that you had, regardless of this
32 document, in relation to files held by your diocese in
33 relation to civil claims against the diocese arising out of
34 priests within the diocese sexually abusing children?
35 A. I don't really know what to say. Whether - I can't
36 recall any of the details that you are --
37
38 Q. Were you concerned at any time during your position as
39 Bishop --
40 A. Yes.
41
42 Q. -- that there was material in the files held by your
43 diocese which could be damaging to the diocese if you were
44 to be sued in relation to the conduct of the diocese or
45 those within it in relation to --
46 A. I can't recall now giving that consideration.
47

1 Q. Familiar to you the concept of concern that the files
2 were containing information that might be considered --
3 A. No, that's not familiar to me.
4
5 Q. Not familiar to you at all?
6 A. No.
7
8 Q. You indicated before your view as to compensation or
9 payments to be made to victims of child sexual abuse at the
10 hands of the diocesan clergy. This is an incident of where
11 your lawyers were involved and, as you indicated earlier,
12 there was a settlement --
13 A. Yes.
14
15 Q. -- and money was paid?
16 A. Yes.
17
18 MS FURNESS: Thank you. Thank you, your Honour, I have
19 nothing further.
20
21 THE CHAIR: Does anyone else have any questions? I can't
22 see Mr Gray at the moment.
23
24 MR GRAY: No, I have no questions.
25
26 THE CHAIR: You have no questions? No-one else?
27
28 MR SKINNER: May I ask a few questions?
29
30 THE CHAIR: Yes, you may.
31
32 <EXAMINATION BY MR SKINNER:
33
34 MR SKINNER: Q. My name is Skinner and I am representing
35 your interests, Bishop.
36 A. Yes.
37
38 Q. Just on this question of subpoenas, do you ever recall
39 the Diocese of Armidale, of which you were the Bishop, in
40 2004 getting a subpoena to produce documents about
41 JJ Farrell?
42 A. I can't recall that, no.
43
44 Q. Can you look at, if it could come up on the screen,
45 please, document 242? That may need to be enlarged. Do
46 you see that? It appears to be something coming out of the
47 District Court in May of 2004. It is directed to,

1 effectively, the Diocese of Parramatta. Do you see that?

2 A. Yes.

3

4 Q. If we scroll down, it seeks documents about
5 JJ Farrell. Do you see that?

6 A. Yes.

7

8 Q. Do you remember seeing one like that, a similar
9 document, a similar subpoena, coming to the Diocese of
10 Armidale?

11 A. No, I've never --

12

13 Q. Do you have any explanation as to why those documents
14 were being sought from Parramatta in 2004?

15 A. I have no idea.

16

17 Q. When you came to the Armidale Diocese in March of
18 1999, as you have said, there was a bit of an interregnum
19 between bishops; correct?

20 A. Yes.

21

22 Q. Your predecessor was Bishop Heather; is that correct?

23 A. No.

24

25 Q. In Armidale, I mean.

26 A. No.

27

28 Q. I am sorry, you're right; your predecessor was Bishop
29 Kevin Manning?

30 A. Yes, that's right, as Bishop. He was a Bishop, yes.

31

32 Q. In Armidale?

33 A. Yes.

34

35 Q. Where did he go after Armidale?

36 A. He was transferred to, or "translated" is the
37 technical term we use, translated to Parramatta.

38

39 Q. Could the witness be shown, then, the next document
40 after that subpoena, being tab 243 in the tender bundle,
41 and if that can be scrolled down a bit, please. That
42 appears to be a letter from Bishop Manning, in 2004, to the
43 solicitors of or acting for the Diocese of Parramatta,
44 Makinson & d'Apice, and, would you accept, about that
45 subpoena that I just showed you a minute ago? Do you see
46 that?

47 A. Do I see what?

1
2 Q. The letter - I'm suggesting to you and you can accept
3 or take it from me as an assumption - appears to be
4 a letter from Bishop Manning --
5 A. Yes.
6
7 Q. -- to his lawyers, or the diocese's lawyers, about
8 that subpoena, seeking the file of Reverend John Farrell to
9 be produced in the District Court?
10 A. Yes.
11
12 Q. From that document, it would appear that at least
13 a copy of the file of Mr Farrell went with Bishop Manning
14 down to Parramatta with him when he left Armidale?
15 A. Maybe; I don't know that.
16
17 Q. Would that be a normal practice?
18 A. No.
19
20 Q. When you took over in March of 1999, were you given
21 any sort of formal handover process?
22 A. Not that I can recall.
23
24 Q. I assume Monsignor Ryan, who had been administering
25 the diocese for a couple of years, met you and showed you
26 around?
27 A. Well, when I was announced to be the next Bishop of
28 Armidale, I contacted Monsignor Frank Ryan and said I would
29 like to come up and meet the priests. So I forget what the
30 exact date, but soon after that I went up to Armidale and
31 Monsignor Frank Ryan met me at the airport and took me to
32 Gunnedah, where there was a meeting of priests of the - of
33 that area of the diocese, for me to meet them and they to
34 see me. The next day we had a similar meeting in Armidale,
35 where I met the priests who were working in that part of
36 the diocese, and then I went back home; so a contact had
37 been made. So I suppose you could call that introduction,
38 I don't know, but --
39
40 Q. Were you introduced to any documents or files in a
41 similar manner by Monsignor Ryan?
42 A. No.
43
44 Q. Finally, you refer to the man Farrell as "JJ Farrell"?
45 A. Yes.
46
47 Q. You insist on doing that?

1 A. I do, because it makes clear in my mind whom we are
2 talking about. You can say "JJ Farrell" when he was
3 a priest or when he was not a priest; you could always
4 refer to him as "JJ Farrell".
5
6 Q. And you don't wish to, really, call him Reverend John
7 Farrell or Father Farrell?
8 A. No.
9
10 Q. Why is that?
11 A. Well, we're talking about a person who has a long
12 history of characteristics in his personality, if I might
13 put it that way. We are talking about the same person
14 here, the same person here - JJ Farrell we're talking
15 about.
16
17 Q. Finally, you were asked about the Encompass program in
18 that letter Ms Furness showed you just a while ago, being,
19 I think, a report back to you. I will show you that again:
20 it is at tab 239.
21 A. Mmm.
22
23 Q. I'm just reminding you of that. Then if the witness
24 could be shown, please - I think you were shown an email at
25 tab 223. Have a look at that. Is that the week's course
26 there, that is referred to, that you wanted him to go to,
27 the one eventually he went to in 2003, being the Encompass
28 course?
29 A. I would say so, yes.
30
31 Q. Could the witness be shown, please, exhibit 224. Can
32 you see that, Bishop? That would seem to indicate that he
33 was resistant to being sent down there; is that correct?
34 A. Oh, yes.
35
36 Q. And it would seem that it took a few years for you to
37 get him to go; is that correct?
38 A. That's right.
39
40 Q. Did you press him to go through that period?
41 A. Eventually, yes.
42
43 MR SKINNER: Yes, thank you. Those are my questions.
44
45 MS FURNESS: I have nothing further, your Honour.
46
47 THE CHAIR: Thank you, Bishop, that concludes your

1 evidence. You are excused.

2

3 THE WITNESS: Thank you, your Honour.

4

5 <THE WITNESS WITHDREW

6

7 MS FURNESS: Your Honour, I wish to tender the balance of
8 transcripts of interviews conducted by Mr Whitlam and the
9 tender bundle as a whole, which includes his report.
10 Perhaps I can describe it as the "Whitlam Tender Bundle",
11 with the exception of tabs W2 and W3 which have been
12 separately tendered as exhibits 44-006 and 44-007.

13

14 THE CHAIR: With those exceptions, we will make the bundle
15 exhibit 44-009.

16

17 MS FURNESS: Thank you, your Honour. The next witness
18 will be at 10am on Monday morning.

19

20 MR BOURKE: I just have one matter to raise, if I might,
21 given that that material has just been tendered.

22

23 Your Honours would recall that on Monday, on behalf of
24 the State, I made certain submissions in connection with
25 the protection of the trial which is listed in April 2017.
26 There have been communications going on between our team
27 and the Commission's lawyers about certain materials that
28 we would seek be redacted, and there has been a large
29 amount of agreement reached with respect to some of those
30 documents. We are concerned as to some still remaining
31 documents that we might be seeking some redactions in
32 respect of so as to reduce the risk in relation to
33 the April 2017 trial.

34

35 It has been indicated to me by my learned friend
36 Ms Furness that at the time the trial is actually heard, it
37 is likely that the Commission would remove this particular
38 case study from its website, and so if that is going to be
39 the proposal, that would certainly lessen some of the
40 concerns that the State would have with respect to the
41 trial, although we would be seeking that perhaps, if that
42 is going to happen, that it happen perhaps in March,
43 shortly before the trial.

44

45 THE CHAIR: If the trial is going ahead, the State can
46 contact us and, of course, we will assist as may be
47 appropriate at the time.

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There has been, over a few years, discussion about take-down orders, including recent discussion about take-down orders as against instructions given to juries, but leaving that to one side and the judges' scepticism about them, we will certainly do whatever is reasonable, when asked at the appropriate time.

MR BOURKE: Thank you, your Honour. So in that respect, that removes some of the concern that the State has. However, there are still some documents about which, in the light of that indication, we are taking instructions about as to whether we would still seek redactions of certain tabbed material.

In that respect, would your Honour give me leave to, if we are, in fact, instructed to continue to seek these redactions, file a written document through my learned friend setting out those areas where agreement has not been reached about redactions? We are happy to give a copy to everybody who is appearing.

THE CHAIR: I'm sorry, these are documents which are presently on --

MR BOURKE: Which have been tendered but which are not yet, as I understand it, on the website.

THE CHAIR: Do you know about all of this?

MS FURNESS: Partly, your Honour. There have certainly been discussions, that I haven't been party to, as to what redactions may or may not be made and, as I understand it, we have made all of the redactions which we think are sensible and reasonable, having regard to the ruling your Honour made on the first day of this case study.

As I understand it, following what your Honour has said about considering reasonably taking down the material relevant to this case study when the trial is on or shortly beforehand, that should have, as I understood it, removed any of the remaining obstacles. However, if there are still matters that my friend's team wishes to discuss, we will do so.

THE CHAIR: What is the position? Are there documents, then, that haven't been put onto the website but which are

1 in evidence? Is that what it amounts to?
2
3 MR BOURKE: Yes, your Honour.
4
5 THE CHAIR: Are there many of those documents?
6
7 MR BOURKE: That are not on the website?
8
9 THE CHAIR: Yes.
10
11 MR BOURKE: I don't think any of them are on the website
12 yet, or they weren't this morning, at least.
13
14 THE CHAIR: None of the exhibits?
15
16 MS FURNESS: Nothing has gone up yet, I understand,
17 your Honour.
18
19 THE CHAIR: It should have, by now. There is a public
20 interest in knowing what the exhibits are.
21
22 MS FURNESS: Yes, which why I particularly wanted to
23 tender the last exhibits today. As I understand it, we
24 have done our best --
25
26 THE CHAIR: Mr Bourke, this is not a very happy position,
27 because the public is entitled to know what is happening
28 here, and the documents are, of course, important,
29 particularly for those who have the responsibility of
30 reporting what is happening here.
31
32 MR BOURKE: Yes. Your Honour, what I'm trying to do here
33 is, to save using hearing time in making submissions about
34 all of these documents, to simply put in a document that
35 your Honour can then make a ruling upon.
36
37 THE CHAIR: That's going to take days, no. No, that's not
38 satisfactory.
39
40 MR BOURKE: I'm not seeking to stop the Commission from
41 putting the material up on the website, because the
42 material has already been tendered, some of it, and my
43 learned friends have agreed to redact it after it has been
44 tendered, in any event. So it's not an application that
45 the material not be put up on the website.
46
47 THE CHAIR: As long as that is understood, then there is

1 no problem if there are to be further redactions later, but
2 that is a recognition that the press will be able to
3 publish anything that is found in the documents that go on
4 to the website at this stage. Is that understood?

5
6 MR BOURKE: That's understood.

7
8 MS FURNESS: As I understand it, your Honour, the
9 documents are ready to go. We have been faithfully
10 negotiating with the State in terms of those redactions
11 before we did so, and it was, indeed, at their request that
12 we hadn't put them up. But I indicated earlier to my
13 friend that I was going to tender these documents this
14 afternoon, and that's what I've done, and the documents
15 will go on the website this afternoon.

16
17 THE CHAIR: Does anyone else want to say anything about
18 that? No. All right.

19
20 Well, with that understanding, Mr Bourke, yes, you can
21 file a document and the matter will be processed in the
22 ordinary course, but the documents should go onto the
23 website so everyone knows what we've been talking about for
24 the last four days.

25
26 MR BOURKE: As your Honour pleases.

27
28 THE CHAIR: Anything else?

29
30 MS FURNESS: No, your Honour.

31
32 THE CHAIR: 10 o'clock on Monday morning.

33
34 AT 2.38PM THE COMMISSION WAS ADJOURNED TO MONDAY,
35 19 SEPTEMBER 2016 AT 10AM

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