

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

**CASE STUDY 35 - MELBOURNE**

**SUBMISSIONS OF CARDINAL PELL**

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## **PRELIMINARY**

Case Study 35 relates to Melbourne. There were a great many victims of child sexual abuse by clergy in the Archdiocese of Melbourne during Frank Little's time as Archbishop of Melbourne. Cardinal Pell feels great sorrow for each and every victim of clergy abuse during that time. He is deeply sorry for the failures of the institution he represents, which have created or compounded their pain.

## EXECUTIVE SUMMARY

1. Between 29 February and 3 March 2016 Cardinal George Pell gave evidence before the Royal Commission into Institutional Responses to Child Sexual Abuse in respect of two case studies, Ballarat and Melbourne. It was the third time Cardinal Pell has given evidence before this Royal Commission, the earlier two occasions being in relation to other case studies.
2. The dominant focus of the Case Study was Father Peter Searson and the damage he caused to the parishes of Sunbury and Doveton.
3. Searson was the parish priest of Doveton from 1984 until March 1997 when he was suspended by Archbishop Pell. George Pell was installed as an Auxiliary Bishop of the Archdiocese of Melbourne in 1987. Counsel Assisting has made a submission that none of the allegations against Searson was properly and thoroughly investigated prior to 1996.<sup>1</sup> The change in 1996 came about because in August of that year George Pell was installed as Archbishop of Melbourne.<sup>2</sup>
4. Considering the attention given to Searson and the issues in Doveton during Cardinal Pell's evidence, one might be forgiven for thinking that his involvement with Searson was extensive. It was not. Many witnesses were called by the Royal Commission with respect to the history of Searson in the parishes of Sunbury and Doveton, and documents were collated from the Archdiocese files, the Catholic Education Office (also referred to in these submissions as the CEO), Victoria Police and other sources over a period spanning more than a decade. The references in those documents to Bishop Pell's involvement with Searson are few and far between. The story told by the witnesses was no different. The evidence demonstrates that Bishop Pell played no major role in the events that unfolded in Doveton.
5. The most significant interaction Bishop Pell had with Searson was when he met with a delegation of teachers in 1989 (**1989 Delegation**). The 1989 Delegation was a meeting organised by a representative of a teachers' union so that the teachers could air their workplace grievances about Searson. At some stage prior to the meeting, a representative from the Catholic Education Office mentioned to Bishop Pell that there had been an historical allegation of 'sexual misconduct' against

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<sup>1</sup> CA Submissions at [762].

<sup>2</sup> Pell T 16529.10-15.

Searson, but did not elaborate and gave Bishop Pell to understand that the allegation could not be sustained.

6. Not one of the Catholic Education Office witnesses who gave evidence at the Royal Commission contradicted Cardinal Pell's evidence about the paucity of information provided to him. Not one of those witnesses ever spoke to Bishop Pell about Searson. Their evidence was that they did not consider Bishop Pell part of the 'decision making process' of the Catholic Education Office.
7. There was nothing to indicate to Bishop Pell that the Education Office had not dealt appropriately with the historical allegation, nor that it was necessarily serious. (It is noted that when giving evidence about events which post-dated the 1989 Delegation Cardinal Pell used the phrase 'sexual misconduct' to include such matters as frequenting the boys' toilets with the excuse that it was to check on graffiti.) The teachers did not mention child sexual abuse at the meeting – it was not the purpose for which they had called the meeting. The teachers expressed concern about the health of Searson, and made it clear they did not want him removed.
8. Arising out of this, Counsel Assisting's Submissions (**CA Submissions**) submit that after the 1989 Delegation meeting Bishop Pell ought to have concluded more serious action was required,<sup>3</sup> that a thorough investigation should have been undertaken,<sup>4</sup> that he should have taken 'direct action of his own to investigate',<sup>5</sup> that he should have urged Archbishop Little to take action,<sup>6</sup> that it was 'incumbent on Cardinal Pell to ... advocate that Searson be removed or suspended',<sup>7</sup> that 'he missed an important opportunity to recognise and deal with the serious risks posed by Searson'<sup>8</sup> and that he failed to exercise proper care for the children of Doveton.<sup>9</sup>
9. The findings recommended against Cardinal Pell are extensive. They are made notwithstanding Bishop Pell's limited knowledge of and interaction with Searson. The submissions are also made in circumstances where Bishop Pell had no cause to question the veracity of what he had been told, being that an allegation had been made but could not be sustained.

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<sup>3</sup> CA Submissions at [622].

<sup>4</sup> CA Submissions at [622].

<sup>5</sup> CA Submissions at [622].

<sup>6</sup> CA Submissions at [622].

<sup>7</sup> CA Submissions at [622].

<sup>8</sup> CA Submissions at [622].

<sup>9</sup> CA Submissions at [622].

10. This is to be compared with CA Submissions in relation to Victoria Police. Unlike Bishop Pell, Victoria Police received direct allegations of child sexual abuse against Searson. On 18 October 1990 police received an anonymous letter making allegations that Searson had molested children.<sup>10</sup> On 27 December 1990, Julie Stewart provided police with a signed statement describing her sexual assault.<sup>11</sup> Victoria Police were also informed of an allegation of non-sexual assault on 2 April 1993 being an incident in which Searson was alleged to have held a knife to the chest of a young girl.<sup>12</sup> In 1994, the Child Exploitation Unit of Victoria Police concluded in a report that they:

... have investigated the complaints and find no allegations of a sexual nature. Interviewed SEARSON who denied same. No victims at this stage.<sup>13</sup>

11. Notwithstanding Bishop Pell had nowhere near the level of knowledge that the Victoria Police had about Searson, CA Submissions seek findings against him which are far more critical and extensive than any recommended against Victoria Police. No submission is made here about what findings, if any, should be made about the police, nor is it intended to criticise the conduct of any individual police officer. A different point is sought to be made. George Pell may now be a Cardinal of the Catholic Church, and he accepts by virtue of that position that he is subjected to greater scrutiny than others. But that does not mean that his involvement in historical events should be inflated or exaggerated because of the position he now holds, nor should the Royal Commission more readily make findings against him because of his title, as opposed to his actual involvement. It is submitted that consistent with the principle of even-handed justice, Cardinal Pell should be treated with the same level of fairness as any other person involved in the matters being considered by the Royal Commission.

12. It is submitted that based on that approach there is no basis for making adverse findings against Bishop Pell, as he then was, with respect to his time in Melbourne as an Auxiliary Bishop.

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<sup>10</sup> Searson Bundle, tab 76 (Exhibit 35-2).

<sup>11</sup> Searson Bundle, tab 84 (Exhibit 35-2).

<sup>12</sup> Searson Bundle, tab 110 (Exhibit 35-2).

<sup>13</sup> Searson Bundle, tab 132 (Exhibit 35-2).

## A. GENERAL MATTERS

13. The Royal Commission's Practice Guideline 1 sets out the appropriate standard of proof for its findings:

In reaching findings, the Royal Commission will apply the civil standard of proof which requires its "reasonable satisfaction" as to the particular fact in question in accordance with the principles discussed by Dixon J in *Briginshaw v Briginshaw* (1938) 60 CLR 336

"...it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent likelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal... the nature of the issue necessarily affects the process by which reasonable satisfaction is attained."

In other words, the more serious the allegation, the higher the degree of probability that is required before the Royal Commission can be reasonably satisfied as to the truth of that allegation.

14. Rich J in *Briginshaw* stated that the requirement amounts to "a comfortable satisfaction that the tribunal has reached both a correct and just conclusion."<sup>14</sup> The *Briginshaw* principles are applicable to findings which are capable of causing damage to reputation<sup>15</sup> or where there is some suggestion of moral wrongdoing.<sup>16</sup>
15. CA Submissions do not mention *Briginshaw*, nor deploy its language. Whilst it may be taken for granted that the *Briginshaw* principles apply, it is important that the principles are not overlooked. It is beyond controversy that the various findings sought by Counsel Assisting have reputational consequences. Thus, the Royal Commission must look for evidence of facts the existence of which it is 'comfortably satisfied' is proven.
16. CA Submissions do not address the critical dimension in this process, namely, the passage of time. Counsel Assisting seeks recommendations about meetings, conversations, and people's understanding and knowledge reaching back more than two decades but does not address how time has impacted on the proof of such

<sup>14</sup> *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 350.

<sup>15</sup> See Hall P, *Investigating Corruption and Permanent Commissions of Inquiry*, Butterworths, 2001 at p 665.

<sup>16</sup> *G v H* (1994) 181 CLR 387 at 399 per Deane, Dawson and Gaudron JJ at [16].

matters. CA Submissions, on their face, could apply equally as if the events in question happened yesterday. In seeking such findings, it is submitted that the Royal Commission cannot ignore the corrosive effect of time on the ability to be comfortably satisfied of such matters to reach a “correct and just conclusion”, particularly in light of the consequences of its findings.

17. A correct application of the *Briginshaw* principles does not mean doing the best one can on the limited or stale evidence available, and determining whether matters may be plausible or by filling gaps in the evidence. The effluxion of time and the historical nature of the events in question is a critical integer in the fact-finding process and a level of proof consistent with *Briginshaw*. Ultimately this may mean that the Royal Commission is only able to address issues at the institutional level, and is unable to determine the factual minutiae of meetings, conversations and individual understandings of the matters before it.
18. It is noted that various parts of transcript and primary materials have been emphasised in these submissions using bold font. Save for some headings in the primary materials or where otherwise indicated, that emphasis has been added.



## B. THE STRUCTURE OF THE CHURCH AND THE ARCHDIOCESE OF MELBOURNE

19. The structure of the Roman Catholic Church is a simple one. The primary structure of the universal Catholic Church is the parish. Parishes are grouped into dioceses led by a bishop. The parishes and the dioceses acknowledge the Pope as the leader of the universal Catholic Church. The Pope, as the leader of the Roman Catholic Church gets his authority from the New Testament as the successor of Peter. The bishops get their authority as the successors of the apostles, founded also on the New Testament teaching and Catholic tradition. Their authority is personal and bound with the responsibilities of their appointment to their Diocese. The bishop acknowledges the authority of the Pope but exercises his own authority as a successor of the apostles; he is not a delegate of the Pope.
20. The authority to direct a bishop sits with the full council of bishops, presided over by the Pope. National conferences such as the Australian Catholic Bishops Conference have no power to direct a Bishop. An archbishop who is Metropolitan of a Province does have some limited powers in the affairs of a diocese within that Province, however canon law prevents interference with the authority of the bishop of that diocese.
21. This case study has explored in detail the failures of the Melbourne Archdiocese under Archbishop Little to appropriately respond to complaints of child sexual abuse. At paragraph 1672 of CA Submissions, Archbishop Hart's criticisms of failure of process and poor handling of complaints are set out. Those criticisms are apt in what they describe: failure of process and handling of complaints. They are not criticisms of the structure of the Roman Catholic Church and could not be interpreted as such.
22. The issue was explored in Cardinal Pell's examination, in the following exchange with the Commissioner:

Q. Well, if we were to look at the Diocese in the way that those who are expert in management might do, it would be appropriate to see it as an organisation with more than 200 branch offices responsible for engaging in activities with thousands, tens of thousands, of people, wouldn't it?

A. I'm not sure that's an exact comparison. The church has been going for a couple of thousand years and our patterns of organisation predate modern corporations and, as a matter of fact, are a bit similar to the patterns of organisation of the Roman Empire where, in fact, there is a lot of responsibility left to the Diocese and to the particular parish priest.

Q. Well, you've got ahead of me, Cardinal, because what Ms Furness has revealed through your evidence at the very least is significant management failure in the Archdiocese of Melbourne, isn't that so?

A. **Yes, and I think that's overwhelmingly the fault of the people you describe as managers.**

Q. Well, if you had any other organisation with more than 200 branch offices engaging with tens of thousands of people, you would have a significant middle management structure in that organisation, wouldn't you?

A. You would if you accepted your premises. We are not like that. There is a direct relationship between the Bishop and the priests. Obviously there are intermediate unofficial groupings, like the regions, but I myself am not in favour of the imposition of a corporate model, either internationally or within a Diocese. For example, there is no "General Manager, Australia", and within a region of a Diocese there is no parish priest who has - who can direct half a dozen or a dozen parishes around him. That's not our model. We have a very flat model of organisation.

Q. Well, does it occur to you, having regard to the management failures that have been revealed at least in the Melbourne Archdiocese, that it might be time to reflect on whether the structure that mirrors the Roman Empire is appropriate for an organisation such as the church in Australia in 2016?

A. We dealt with - we dealt with this problem in one - in the aspect that is of interest to the Commission 20 years ago when we set up the Melbourne Response, and in Australia when we set up Towards Healing, and such mechanisms are quite compatible with the traditional structure of the church and **I would suggest that whatever the Royal Commission recommends, the present structures of the church will be able to accommodate.**

23. Cardinal Pell went on to make the point that over the past twenty years the Church has implemented comprehensive programs of education, prevention and care about formation. These programs are actively pursued in the Church now and have been for about twenty years and that is one reason why the Catholic institutions are now among the safest in Australia.<sup>17</sup>

24. The evidence continued as follows<sup>18</sup>:

Q. Well, the fact of the matter is that there were gross failures of management in the Melbourne Archdiocese, which allowed priests to abuse children, weren't there?

A. Not after my - not from my time or after my time.

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<sup>17</sup> Pell T 16413.22-27.

<sup>18</sup> Pell T 16413.29-44.

Q. No, but before your time there were these management failures. What I want to ask you is whether or not, if you had had an effective middle management system in place, as would any corporation responsible for more than 200 branch offices, do you think that would have helped?

A. Your Honour, we have a different model. I don't think we need to move to a corporate model. The point you are making about intermediary offices, about adequate procedures, is completely correct, but I don't think we need to abandon the traditional structures to meet the important needs that you are outlining.

25. Paragraph 1693 of CA Submissions mixes two important but distinct concepts by submitting that the personal failures of Archbishop Little and other persons who had direct knowledge of abuse to take appropriate action are structural failures of the Catholic system of governance. There are several reasons why that submission is misconceived.
26. Firstly, the submission fails to take into account that the same structural system of governance also allowed the sweeping reforms brought in by Cardinal Pell through the Melbourne Response which quickly and transparently removed offending priests from operation (including Searson and Baker). This system of governance allows a Bishop to make and implement the right decision as an incident of his authority within the structure of the Church and (as was the case with Searson) to withstand a contrary decision coming from Rome in the interests of the Parish and the Archdiocese.
27. Secondly, the submission ignores the effectiveness of the efforts the Catholic Archdiocese of Melbourne and the Catholic Church more broadly to reform itself in relation to child protection. That reform has been highly effective and not hampered by the structure of the Church.
28. Thirdly, the submission ignores the fact that the Catholic Church operates in a completely integrated way with Australian society. Since the 1990s, there has been significant law reform and procedural change in relation to the prevention and response to child abuse. The Catholic Church has participated in that change in cooperation with the several authorities in each state and territory. As the Royal Commission has established clearly, child sexual abuse is not a Catholic problem, or even a religion problem: it has affected all aspects of Australian society. The checks and balances that are put in place by effective regulation, legislation and prosecution of offences throughout Australian society supplement and give force to the changes

that the Catholic Church has implemented to create one of the safest environments for children. That has occurred with no change in structure of the Church.

29. Finally, this submission ignores the evidence that there was the option of going to the Nuncio. It appears that Bishop Deakin did this in an informal way.
30. The failure of Archbishop Little to appropriately act on complaints of child sexual abuse (and, indeed other aberrant behavior in Searson's case) is a personal failure and a failure of the leadership of the Archdiocese at the time. Additionally, Archbishop Little failed to set up any procedures to deal with allegations of child sexual abuse. However, the systems set up by Archbishop Pell and maintained by Archbishop Hart to transparently deal with child sexual abuse claims fit equally well within the same structure of the church. They are sides of the same coin: indeed, the power and responsibility residing in the Bishop provides the authority for direct and deliberate action that a bureaucracy or other corporate model may stifle.

## C. PETER SEARSON

### Cardinal Pell's testimony supported by all of the evidence

31. During the cross examination of Cardinal Pell, Counsel Assisting asked the following question:

Cardinal, I have to suggest to you that your evidence in relation to not being briefed properly or adequately by the Catholic Education Office and the reasons for that are completely implausible.<sup>19</sup>

32. Counsel Assisting's question contains within it the proposition that Cardinal Pell's evidence as to being properly or adequately briefed by the Catholic Education Office (the **CEO**) was 'completely implausible'.

33. There was no evidence adduced before the Royal Commission which tended to prove that Bishop Pell was properly or adequately briefed by the CEO. To the contrary. All of the evidence presented to the Royal Commission pointed to a single conclusion, namely, that Bishop Pell was **not** properly or adequately briefed by the CEO in relation to Searson.

34. Unsurprisingly, the proposition put to Cardinal Pell was reported by a number of media outlets. Given that there was a direct allegation that his evidence was implausible, which proposition is contrary to the conclusion sustained by the evidence, it is submitted that as a matter of fairness it is incumbent on the Royal Commission to make a finding that Bishop Pell was not properly or adequately briefed by the CEO with respect to Searson.

35. Set out below is the abundance of evidence which supports Cardinal Pell's testimony with respect to the absence of any fulsome briefing by the CEO.

36. It is also noted that Cardinal Pell was asked to speculate as to *why* the CEO may not have provided him with all the information it had with respect to Searson. This is a red herring. Speculation as to possible motivations behind the non-disclosure of information distracts from the relevant issue. The important question is *whether* the CEO provided the information in question to Bishop Pell. On this point, Cardinal Pell's evidence was consistent with that of all of the CEO officers called to give evidence, namely, Monsignor Doyle, Mr Annett, Mr Dooley and Mrs Briant.

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<sup>19</sup> Pell T 16387.9-12.

37. To that end, it is noted that Cardinal Pell does not seek to resist a finding that there was no intentional deception by the CEO. Indeed, Cardinal Pell welcomed evidence from the officers of the CEO to the effect that any non-disclosure of the full extent of Searson's misconduct, or the views held by some of the CEO officers that Searson presented a risk to children, was not borne out of any intention to deceive him.
38. Ultimately, it is most probable that Bishop Pell was not told about historical allegations of sexual misconduct by the CEO because it was the view of its officers that Bishop Pell was not part of the decision making process, and there was no point in providing that information to him.

### **Catholic Education Office (CEO)**

39. Monsignor Doyle was the Director of the CEO from 1979 to 2002.<sup>20</sup>
40. Peter Annett was the Deputy Director from 1982 to September 1989.<sup>21</sup> In September 1989 Mr Annett moved to Canberra to take up another role and did not return to Melbourne until 1993 when he resumed his position as Deputy Director of the CEO until 2005.<sup>22</sup>
41. Sister Joan Power was the Chairperson<sup>23</sup> for Primary Education in 1984 until about 1987 and was assisted by Norm Lalor who took over the role in about 1987.<sup>24</sup>
42. Catherine Briant was an educational consultant with the CEO and held that position in the "Peninsula Zone" from 1982 to 1988, and the Outer Eastern Zone (which included Holy Family Doveton) from 1989 to 1990. The educational consultants reported directly to a chairperson.<sup>25</sup>
43. Allan Dooley was also an educational consultant with the CEO and held that position in the Outer Eastern Zone from 1984 to 1988, and the Northern Zone from 1989 to 1990.<sup>26</sup>
44. Monsignor Doyle, Mr Annett, Ms Briant and Mr Dooley all gave evidence in public hearings before the Royal Commission. Mr Lalor did not give evidence and was

<sup>20</sup> Statement of Thomas Michael Doyle dated 19 November 2015 at [11] (Exhibit 35-22).

<sup>21</sup> Statement of Peter Annett dated 21 March 2016 at [8] (Exhibit 35-70).

<sup>22</sup> Statement of Peter Annett dated 21 March 2016 at [9] (Exhibit 35-70).

<sup>23</sup> A term used to describe a manager assigned to a particular area of responsibility: statement of Peter Annett dated 21 March 2016 at [7] (Exhibit 35-70).

<sup>24</sup> Statement of Thomas Michael Doyle dated 19 November 2015 at [50] (Exhibit 35-22).

<sup>25</sup> Statement of Thomas Michael Doyle dated 19 November 2015 at [18] (Exhibit 35-22).

<sup>26</sup> Statement of Allan Dooley dated 23 November 2015 at [5] (Exhibit 35-23).

excused on medical grounds. Sister Power was not called by the Royal Commission to give evidence in public hearing and no statement of hers was ever served.

### **Monsignor Doyle – the Director of the CEO**

45. Monsignor Doyle was the head of the CEO in the 1980s and 1990s. He holds a Bachelor of Commerce from the University of Melbourne<sup>27</sup> and from time to time has held a number of clerical appointments in the Archdiocese of Melbourne.<sup>28</sup> His evidence was that he had overall responsibility for the CEO, which included responsibility “to act on behalf of the [Archbishop] in matters concerning Catholic Education” and “administering ... Catholic Education in the Archdiocese.”<sup>29</sup>

46. Monsignor Doyle gave evidence that:

- a. he reported ‘directly to the Archbishop of Melbourne’,<sup>30</sup> and ‘[o]nly the Archbishop had the authority to take action in relation to priests’,<sup>31</sup>
- b. he had regular monthly meetings with the Archbishop and other scheduled meetings where necessary, and also was in telephone contact when necessary;<sup>32</sup>
- c. Monsignor Doyle and the Archbishop worked in the same building so if an issue of significance came up from time to time he would check if the Archbishop was available and go and see him face to face;<sup>33</sup>
- d. in practice schools regarded the CEO as the ‘central co-ordinating body’;<sup>34</sup>
- e. the CEO referred serious complaints to the Archbishop or the Vicar General,<sup>35</sup> although it was rare for others in the CEO to report any matters to the Vicar General;<sup>36</sup> and

<sup>27</sup> Statement of Thomas Michael Doyle dated 19 November 2015 at [7] (Exhibit 35-22).

<sup>28</sup> Statement of Thomas Michael Doyle dated 19 November 2015 at [10] (Exhibit 35-22).

<sup>29</sup> Statement of Thomas Michael Doyle dated 19 November 2015 at [13] (Exhibit 35-22).

<sup>30</sup> Statement of Thomas Michael Doyle dated 19 November 2015 at [14] (Exhibit 35-22).

<sup>31</sup> Statement of Thomas Michael Doyle dated 19 November 2015 at [30] (Exhibit 35-22).

<sup>32</sup> Statement of Thomas Michael Doyle dated 19 November 2015 at [15] (Exhibit 35-22).

<sup>33</sup> Doyle T 13353.4-10.

<sup>34</sup> Statement of Thomas Michael Doyle dated 19 November 2015 at [27] (Exhibit 35-22).

<sup>35</sup> Statement of Thomas Michael Doyle dated 19 November 2015 at [32] (Exhibit 35-22).

<sup>36</sup> Doyle T 13353.45-47.

- f. the CEO 'kept confidential files in respect of serious complaints. There was such a confidential file in respect of the Holy Family School Doveton. The confidential files were only available to senior staff within the CEO'.<sup>37</sup>

No communication with Regional Bishops about Searson

47. Monsignor Doyle was very clear that he did not engage with regional bishops about Searson:

THE CHAIR: Q. It's plain that there were difficulties with the Archbishop, but again, did you not feel bound in your role to do whatever you could to get others, in positions of influence, to try and see whether they could turn the Archbishop and have him realise the problems that existed?

A. Yes, Your Honour, but I think there would be a lot of informal talk about these sorts of things and the difficulty of getting the Archbishop to move, but there was no formal structure.

Q. I understand that, but even informal talk; couldn't you go and knock on others' doors who might have some influence with the Archbishop and say, "I need your help"?

A. I think we tried to do that with the Vicar-General.

Q. What about others?

A. There were not many others who influenced the Archbishop.

Q. Well, there was a number of assistant Bishops, weren't there?

A. Yes.

Q. Why couldn't you go to all of those and say, "I need your help?"

A. **With hindsight, I think –**

Q. Why not at the time?

A. **They really were not part of the decision making structure in this area.**

Q. I understand that, but here you are, you've got a brick wall as it's starting to emerge; you've got a real problem that's causing obviously great grief for this school, which is part of your responsibility; wouldn't you do what you could, with those who might have influence, talk to them informally and say, "I need your help?"

A. Yes, we should have.

Q. Why didn't you?

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<sup>37</sup> Statement of Thomas Michael Doyle dated 19 November 2015 at [46] (Exhibit 35-22).



A. I probably thought it wasn't any use to do it.

Q. But you didn't even try.

A. **Not with the Auxiliary Bishops.**<sup>38</sup>

48. In answer to questions from Commissioner Coate, Monsignor Doyle went on to explain that he formed an opinion that Searson should be removed from the parish; he expressed that opinion 'constantly' to the Archbishop; and his normal practice was to tell the Vicar General, but there was nothing in writing.<sup>39</sup>

49. Monsignor Doyle explained why he did not communicate with the Regional Bishop about Searson. In relation to a non-sexual complaint against Searson in 1984, it became apparent that the Archbishop was not taking any real action. Monsignor Doyle was asked whether he approached the Regional Bishop, who at the time was Bishop Kelly, for help. His evidence was that he did not do so because:

I would have thought it of no use to go to the Regional Bishop ... [because] if I couldn't convince the Archbishop, I don't think the Regional Bishop could have either.<sup>40</sup>

50. Monsignor Doyle may or may not have been right about the inability of others to convince Archbishop Little in circumstances where he had been unable to persuade. The relevant fact is: Monsignor Doyle did not communicate with the Regional Bishops about Searson.

#### No communication with Bishop Pell about Searson

51. Monsignor Doyle also gave evidence as to his interactions with Bishop Pell concerning Searson. He had no recollection of:

... **ever** having a discussion with or attending **any** briefings of Bishop Pell concerning Father Searson in the period when he was Regional Bishop. <sup>41</sup>

52. He explained why:

The CEO did not report to the Regional Bishops, and they were rarely involved in discussions about school issues. On those issues, I dealt directly with Archbishop Little and sometimes the Vicar General.<sup>42</sup>

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<sup>38</sup> Doyle T 13374.40 - 13375.41.

<sup>39</sup> Doyle T 13375.43 - 13376.13.

<sup>40</sup> Doyle T 13367.12-34.

<sup>41</sup> Statement of Thomas Michael Doyle dated 18 March 2016 at [8] (Exhibit 35-68).

<sup>42</sup> Statement of Thomas Michael Doyle dated 18 March 2016 at [8] (Exhibit 35-68).

53. Eventually, Monsignor Doyle formed a view that there was a risk to children of sexual advances by Searson.<sup>43</sup> One thing is clear on the evidence: Monsignor Doyle never informed Bishop Pell that he held this view. Nor did he ask Bishop Pell for his assistance in seeking to persuade Archbishop Little to remove Searson from Doveton.

54. Monsignor Doyle explained that he did not think it would make any difference to have communicated with the Regional Bishop because the message he was receiving from the Vicar General and the Archbishop was that Searson would be remaining where he was.<sup>44</sup> This message was a source of constant frustration for Monsignor Doyle. He gave this evidence:

Q. There was, by this stage [in 1986], a very large volume, and I'll take you to more, but by this stage a very large volume of complaints and in some instances corroborated by other accounts, and you had concluded they were credible. You must have found it very frustrating if Archbishop Little was taking the opposite view?

A. I think that's an understatement.

Q. What did you do to try and persuade him of a different view?

A. Well, I repeatedly went to the Archbishop about these matters ... by arguing with him, and asking for the removal, asking him about the possibilities of removing Father Searson.<sup>45</sup>

55. Monsignor Doyle possessed knowledge about 'a very large volume of complaints' he thought were credible. Monsignor Doyle did not cease in his efforts to persuade the Archbishop out of inaction on Searson. Monsignor Doyle's consistent evidence was that he always responded by addressing the Archbishop on such matters, and sometimes the Vicar General, but he never broached the topic with the Regional Bishops including Bishop Pell.

56. It does not matter whether Monsignor Doyle intentionally held back his knowledge about Searson from Bishop Pell, or whether he simply thought the disclosure futile. It is submitted that the only relevance for the Royal Commission is the evidence of what actually happened. All of the documentary evidence and witness testimony, **without exception or contradiction**, is that Monsignor Doyle did not discuss Father

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<sup>43</sup> Doyle T 13382.21-25.

<sup>44</sup> Doyle T 13391.2-8.

<sup>45</sup> Doyle T 13400.29-36.

Searson with Bishop Pell. More particularly, Monsignor Doyle's evidence with respect to the 1989 Delegation was that:

I did not attend the [1989 Delegation] meeting ... I am **not aware of any other discussion** between Bishop Pell and any officers of the CEO in relation to Father Searson.<sup>46</sup>

#### **Peter Annett – the Deputy Director of the CEO**

57. Peter Annett holds a Secondary Teachers Certificate (1962) and a Bachelor of Commerce from the University of Melbourne (1970).<sup>47</sup> Mr Annett was appointed the Deputy Director of the CEO in 1982 and held that position until September 1989.<sup>48</sup>

58. Mr Annett provided a statement of evidence as follows:

I do not recall having had any formal dealings or meetings with Bishop Pell when I was the Deputy Director of the CEO and he was a Regional Bishop. I do not recall ever talking to him or briefing him on Father Searson, or on any other matter regarding the CEO, nor do I recall ever having been told of any briefing the CEO or its personnel provided to Bishop Pell on any matter.

My recollection is that like the other Regional Bishops, Bishop Pell had very little to do with the CEO in relation to the schools in his region. The Bishops visited the schools for meet and greets with staff, for the openings of buildings or when required to administer the sacrament of confirmation. They were not normally called on to assist with any issues in the schools, and during the period when Archbishop Little was in office, the CEO, mainly Monsignor Doyle, usually dealt directly with Archbishop Little or the Vicar General if there were serious issues to address. As Cardinal Pell said, the Bishops were "not part of the official procedures".<sup>49</sup>

59. The effect of Mr Annett's evidence, consistent with that of Monsignor Doyle, is that neither the Director nor the Deputy Director of the CEO communicated with Bishop Pell about Searson, ever.

60. Mr Annett's evidence also provides some contextual understanding as to the limited role of Regional Bishops, and why they were not part of the administrative processes of the CEO. This explains why an officer of the CEO would report up the chain to the Director, who in this case had a close relationship with the Archbishop, but not brief a Regional Bishop about a complaint.

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<sup>46</sup> Statement of Thomas Michael Doyle dated 18 March 2016 at [9] (Exhibit 35-68).

<sup>47</sup> Statement of Peter Annett dated 21 March 2016 at [7] (Exhibit 35-70).

<sup>48</sup> Statement of Peter Annett dated 21 March 2016 at [8] (Exhibit 35-70).

<sup>49</sup> Statement of Peter Annett dated 21 March 2016 at [15] to [16] (Exhibit 35-70).

### Allan Dooley – the Education Consultant

61. Allan Dooley holds a Primary Teachers Certificate (1968), a Bachelor of Arts from Swinburne College of Technology (1982), a Bachelor of Education from La Trobe University (1988), and a Masters of Education from the University of Melbourne (1995).<sup>50</sup> Mr Dooley became a teacher in 1972 and was the Principal of two parish schools between 1974 and 1983.<sup>51</sup>

62. As the educational consultant for the Outer Eastern Zone he was responsible for about 25 schools.<sup>52</sup> Mr Dooley's evidence is that he had:

... no recollection of attending or being involved in **any meeting or discussion with Bishop Pell about Father Searson** or issues in relation to the Holy Family School at Doveton, either during my period of employment at the CEO or subsequently.<sup>53</sup>

63. Further, Mr Dooley gave evidence that he had:

No recollection of being aware while I was a CEO employee ... **of any discussions between Bishop Pell and any other person from the CEO in relation to Father Searson.**<sup>54</sup>

64. Mr Dooley did not have anything to do with the 1989 Delegation because he had changed roles at the CEO at the end of 1988.<sup>55</sup> The effect of Mr Dooley's evidence is that neither he nor anyone else from the CEO spoke with Bishop Pell about Searson, and Mr Dooley would certainly not have spoken with Bishop Pell about the 1989 Delegation because he no longer had any role relating to Holy Family Doveton by that stage.

65. Mr Dooley is another witness from the CEO who gives evidence, consistent with his Director and Deputy Director, that he did not brief Bishop Pell on matters relating to Searson.

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<sup>50</sup> Statement of Allan Dooley dated 23 November 2015 at [3] (Exhibit 35-23).

<sup>51</sup> Statement of Allan Dooley dated 23 November 2015 at [4] (Exhibit 35-23).

<sup>52</sup> Statement of Allan Dooley dated 23 November 2015 at [10] (Exhibit 35-23).

<sup>53</sup> Statement of Allan Dooley dated 5 April 2016 at [7] (Exhibit 35-69).

<sup>54</sup> Statement of Allan Dooley dated 5 April 2016 at [8] (Exhibit 35-69).

<sup>55</sup> Statement of Allan Dooley dated 5 April 2016 at [9] (Exhibit 35-69).

## Catherine Briant – the Education Consultant

### No contact with Bishop Pell

66. From 1989, Catherine Briant was the ‘person on the ground’ who had to monitor the events in Holy Family Doveton on a daily or weekly basis.<sup>56</sup> She holds a Primary Teaching Certificate (O’Neill College), a Bachelor of Education (University of New England) and various diplomas.<sup>57</sup> In the 1960s and 1970s Mrs. Briant held various positions as a teacher and principal.<sup>58</sup>

67. Mrs Briant was the educational consultant for the Peninsula Zone from 1982 to 1988 and for the Outer Eastern Zone from 1989 to 1990.<sup>59</sup> She reported to Monsignor Doyle.<sup>60</sup>

68. Mrs Briant’s evidence was that:

- a. she had no involvement in, nor knowledge of any meeting or briefing with Bishop Pell in 1989 relating to Holy Family Doveton.<sup>61</sup>
- b. she has never met Cardinal Pell nor ever attended any meeting or briefing at which he was present;<sup>62</sup> and
- c. although she understood there were many problems with Searson at Doveton, she “was not aware that those problems included allegations or complaints of sexual abuse or misconduct” made against him.<sup>63</sup>

69. Mrs Briant was the CEO representative with day-to-day responsibility for Holy Family Doveton. The fact she never even spoke with the Regional Bishop is consistent with the evidence of Mr Annett and other witnesses (including Cardinal Pell) that the Regional Bishop was not part of the processes of the CEO.

70. Mrs Briant is another witness who never spoke with Bishop Pell about Searson.

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<sup>56</sup> Doyle T 19201.11-20.

<sup>57</sup> Statement of Catherine Briant dated 18 March 2016 at [5] (Exhibit 3571).

<sup>58</sup> Statement of Catherine Briant dated 18 March 2016 at [6-7](Exhibit 3571).

<sup>59</sup> Statement of Catherine Briant dated 18 March 2016 at [8] (Exhibit 3571).

<sup>60</sup> Briant T 19235.4-7.

<sup>61</sup> Statement of Catherine Briant dated 18 March 2016 at [13-14] (Exhibit 3571).

<sup>62</sup> Statement of Catherine Briant dated 18 March 2016 at [15] (Exhibit 3571).

<sup>63</sup> Statement of Catherine Briant dated 18 March 2016 at [16(e)] (Exhibit 35-\*\*\*).

Mrs Briant's role as Educational Consultant

71. Mrs Briant gave evidence about taking over the Education Consultant role in 1989:

[Duggan] Q. Did you get a briefing when you took over in 1989 from either Mr Dooley or Mr Lalor or anyone else within the CEO?

A. No.

Q. You never received a briefing?

A. No, but then I didn't give a briefing to the person that replaced me either.

Q. You were responsible for about 25 schools, including Holy Family; is that right?

A. Yes, that's right.

Q. And you were the main link, weren't you, between the school and the Catholic Education Office and headquarters?

A. Yes.

Q. You have been asked some questions about this meeting in late 1989 with the teachers, Bishop Pell and Mr Lalor?

A. Yes.

Q. But you say you never had any awareness of it?

A. No, I had none, no.

Q. Mr Lalor never told you about it?

A. No.<sup>64</sup>

72. Mrs Briant went on to give evidence that during her time as consultant responsible for Holy Family Doveton she was never briefed on any allegations of child sexual abuse relating to Searson.<sup>65</sup> She also gave this evidence about her role as a consultant:

- a. In the files that she was provided during her involvement with Holy Family Doveton in 1989 and 1990 she did not read of any allegations of a sexual nature including in relation to a child rushing out of the confessional.<sup>66</sup>

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<sup>64</sup> Briant T 19244.46 - 19245.23.

<sup>65</sup> Briant T 19245.25-46.

<sup>66</sup> Briant T 19237.36-39.

- b. She worked from a zone office in Boronia and not from CEO headquarters.<sup>67</sup>  
There was a file for each school kept in the Boronia office which would have included complaints.<sup>68</sup> The file was not a computerised file.<sup>69</sup>
- c. As the consultant for the Outer Eastern Zone she was the main link between Holy Family School Doveton and the CEO and its headquarters.<sup>70</sup>
- d. Most of the time she reported to Mr Lalor.<sup>71</sup>

73. Mrs Briant was the zone consultant at the time of the 1989 Delegation meeting. Her unchallenged evidence was that she never communicated with Bishop Pell about any matter, and she never knew that Searson had been accused of sexual abuse or being sexually inappropriate.

74. Mrs Briant reported to Mr Lalor. She received no briefing from Mr Lalor or anyone else upon the commencement of her role. According to Mrs Briant, in that role she formed the link between Holy Family Doveton and the rest of the CEO. Mrs Briant was described in evidence as the CEO's 'person on the ground' in Doveton in 1989. If anyone needed to know about Searson's previous sexual conduct in relation to children, and the view formed by her superiors that children were at risk of sexual harm from Searson, it was Mrs Briant.

75. If nothing else, the evidence establishes that not everyone within the CEO had the same knowledge or awareness about Searson. This is important because whilst the various files relating to Searson have been collated for the purposes of Case Study 35, that does not mean that the information contained in those files was known by all of the officers of the CEO. As Mrs Briant's evidence demonstrates, this was certainly not the case.

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<sup>67</sup> Briant T 19244.34-36.

<sup>68</sup> Briant T 19244.10-20.

<sup>69</sup> Briant T 19244.30-32.

<sup>70</sup> Briant T 19245.11-13.

<sup>71</sup> Briant T 19244.41-44.

### **Graeme Sleeman – the Principal**

76. Mr Sleeman was the principal of Holy Family Doveton. He resigned in September 1986. He was an important witness with respect to this part of Case Study 35. His evidence was that he had **no dealings** with Bishop Pell at any stage during his time at Holy Family Doveton.<sup>72</sup>

77. Mr Sleeman is a further witness who had some knowledge or suspicion of Searson's sexual misconduct whose evidence was that he had no discussions with Bishop Pell about that fact.

### **Gerald Palmer – the teachers' union representative**

78. Mr Palmer provided a statement to the Royal Commission. He was not cross examined and his evidence was uncontested. His evidence was that:<sup>73</sup>

- a. in 1989 he was involved in setting up a meeting between some teachers and Bishop Pell;
- b. he does not recall Mr Lalor being at the meeting but does not deny he was there;
- c. he communicated the teachers' grievances at the meeting as their representative and he believes the group discussed the items on the list of grievances;
- d. his "clearest recollection of the meeting with Bishop Pell is that at some point during the meeting, one or more of the teachers said words to the effect that they would give Fr Searson a second chance"; and
- e. he was very disappointed that "after going to the trouble of organising the meeting the teachers did not press their grievances".

79. CA Submissions submit that after the 1989 Delegation Bishop Pell missed an "important opportunity to recognise and deal with the serious risks posed by Searson."<sup>74</sup> The evidence of Mr Palmer shows why this is an unfair characterisation of the circumstances. Mr Palmer's evidence is to the effect that the 1989 Delegation was driven by the teachers. Mr Lalor appears to have had no or minimal input at the

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<sup>72</sup> Sleeman T 13322.1-8.

<sup>73</sup> Statement of Gerald Palmer dated 11 November 2015 at [12] - [16] (Exhibit 35-4).

<sup>74</sup> CA Submissions para 622.



meeting. The attitude of the teachers was compelling. They stated expressly that they did not want the removal of Searson. But what is even more telling is what was not said at the meeting. The teachers did not say ‘Searson is a paedophile’ or that ‘he is sexually abusing our kids’. According to Mr Stack, who was at that meeting, the teachers raised Searson’s mental health but, relevantly, only in a way that expressed concern for Searson and not to suggest Searson might be sexually assaulting children. If the teachers did raise sexual abuse at the meeting, that is something one would expect Mr Palmer to remember. Moreover, it is also something one would expect to appear in Mr Lalor’s file note of the meeting. It is therefore an entirely unfair characterisation of events to suggest that Bishop Pell missed an opportunity to arrest the risk of sexual abuse presented by Searson given the content and context of the meeting.

### **Bishop Kelly and Father Deakin**

80. Bishop Kelly was the Regional Bishop in the Southern Region prior to Bishop Pell.

81. In 1986 Bishop Kelly resigned as Regional Bishop. He had cancer and died in 1987. Father Deakin did not replace Bishop Kelly, but filled in until a replacement was found, mainly to perform confirmations.<sup>75</sup> Bishop Deakin’s evidence was that:

- a. he did not “know about [Searson’s] sexual behavior”;
- b. “I do remember talks about Searson, not about his sexuality ...”;<sup>76</sup>
- c. “they weren’t sex [complaints]”;<sup>77</sup> and
- d. he “never heard” talk about Searson “sexually misconducting himself.”<sup>78</sup>

82. There is no evidence that Bishop Kelly played a significant role with respect to Searson. Further, Bishop Kelly’s illness and death prevented any handover between himself and his successor as Regional Bishop, Bishop Pell. When Bishop Kelly resigned Father Deakin did visit him in hospital but he had cancer, was in pain and Father Deakin did not think they ever ‘spoke business’ at all.<sup>79</sup>

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<sup>75</sup> Deakin T 14111.31-47.

<sup>76</sup> Deakin T 14094.24-45.

<sup>77</sup> Deakin T 14104.9.

<sup>78</sup> Deakin T 14113.20-26.

<sup>79</sup> Deakin T 14130.7-19.

## Archbishop Hart

83. Part 2.5 of CA Submissions deal with the Delegation to Bishop Pell in November 1989. In that section CA Submissions summarise some of Archbishop Hart's evidence with respect to Searson. There is a suggestion from its location in that part of the report that Archbishop Hart's evidence is relevant to the 1989 Delegation.
84. To make matters clear, Archbishop Hart had nothing at all to do with the events of the 1989 Delegation nor those events which preceded it. The evidence he gave was therefore necessarily speculative because it was not given from personal knowledge of the events in question. Importantly, the opinions he expressed about the 1989 Delegation followed a summary of his understanding (gained after the event) of most if not all of Searson's worst conduct. It is hardly surprising therefore that he expressed the views he did about Searson. His opinions were expressed with the superior knowledge of Searson's wrongdoing that hindsight provides.
85. Relevantly, Archbishop Hart accepted that the teachers' attitude in expressing their grievances was an important consideration and the fact that one or more teachers wanted Searson to be given a second chance was a matter to take into account in determining the context of the airing of the grievance.<sup>80</sup> He also accepted that Bishop Kelly's illness would have made a handover between Regional Bishops more difficult.<sup>81</sup>

## Norm Lalor – the Chairperson

86. Mr Lalor was unable to give evidence before the Royal Commission. He was a 'chairperson' of the CEO at the time of the 1989 Delegation. Whilst there was no oral testimony as to his recollection of events in 1989, the documents provide some insight as to the approach he took to complaints against Searson in the preceding year, 1988. On 15 March 1988, Allan Dooley wrote a letter to Father Doyle reporting two complaints about Searson.<sup>82</sup> The first was from a parent 'who maintains that Searson struck her son to the face with a clipboard.' The second incident, which Mr Dooley stated was a 'serious concern', reported an incident where Searson had picked up a cat by the tail which 'according to the children ... was alive ... swung it around through the air and threw it over the cyclone wire fence which surrounds the school grounds. The cat lay dead on the nature strip.'

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<sup>80</sup> Hart T 13823.42 -13824.18.

<sup>81</sup> Hart T 13824.45 – 13825.2.

<sup>82</sup> Searson Bundle, tab 57A (Exhibit 35-2).

87. Mr Lalor appears to have provided this letter together with a cover note for Father Doyle. The cover note reads:

Fr Doyle,

I would suggest this letter be read when you need some humour. Page 2 [the cat incident] is quite interesting.

Norm [Lalor].<sup>83</sup>

88. There is no suggestion that Bishop Pell ever saw this letter. What is interesting, however, is the fact that Mr Lalor's cover note conveys the impression he did not take the complaints seriously. Whilst one cannot read too much into the remark made in the cover note, it is entirely possible that when Mr Lalor informed Bishop Pell of the non-specific allegation before the 1989 Delegation, he did so in a casual manner which understated the seriousness of the underlying event.

89. The following year, in June 1989, the staff prepared their 'list of grievances' which had apparently been supplied to Mr Palmer and sent under cover of a staff letter to Father Doyle which set out the gist of the teachers' concerns (**Staff Letter**).<sup>84</sup> The Staff Letter refers to having received 'legal advice' and expressed a preference for 'Mr Palmer to mediate in any discussions'. The letter spoke of morale at the school being at a very low ebb which was having a significant effect on staff and children before stating that '[i]n the long term the aims of the school will be seriously disadvantaged.'

### **Events leading up to the 1989 Delegation meeting**

90. The Staff Letter is important for what is not said. There is no reference to children being at risk of sexual abuse. The references to legal advice, mediation and the teachers' union representative create a distinct impression that the concern in the minds of the teachers was something other than the risk of sexual assault.

91. A file note to Mr Lalor in late July 1989 suggests that an initial proposal had been made to send the Staff Letter to the Archbishop, but Mr Lalor recommended trying 'a lower key approach first'.<sup>85</sup>

<sup>83</sup> Searson Bundle, tab 57 (Exhibit 35-2).

<sup>84</sup> Searson Bundle, tab 61 (Exhibit 35-2).

<sup>85</sup> Searson Bundle, tab 63 (Exhibit 35-2).

92. On 8 August 1989, Mr Annett and Mr Lalor visited Searson at Holy Family Doveton.

A file note of that visit records:

It was explained to Father that the staff concern was about how he approached them and that his approach **may lead to industrial problems**.<sup>86</sup>

93. The visitation record continued:

Father was told that staff morale was low. It appeared to be beyond Father to accept this as he maintained that everything that could be done was done to assist them. He maintains the heaters have been serviced, lighting is in accordance with the Health Department regulations; painting has been done in the school and in the toilets, and an application for refurbishing funding has been submitted but no response has been forthcoming. He also said it was necessary for him to help supervise the boys' toilets as there were only two males on staff. Supervision was necessary to help overcome graffiti problems.<sup>87</sup>

94. The memorandum goes on to detail staff complaints about their salary cheques bouncing and other financial matters. There is nothing in the visitation record which would make one suspect that the staff were concerned about child sexual abuse.

The note concludes:

Father reluctantly agreed to work through the principal to avoid further problems with staff. ... Norm Lalor also said that Cath Briant the Educational Consultant would monitor the situation by making regular contact with him.

95. Mrs Briant's evidence was that she never heard or was briefed about sexual allegations against Searson. Mrs Briant's evidence that she was dealing only with staff related complaints at this time is consistent with the themes referred to in this file note.

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<sup>86</sup> Searson Bundle, tab 65 (Exhibit 35-2).

<sup>87</sup> Searson Bundle, tab 65 (Exhibit 35-2).

## A matter of workplace relations

96. Bishop Pell did not have responsibility for making decisions about whether Searson should remain at Holy Family Doveton. He was not provided with anything near the information someone would need if they were to have such responsibility. He was not provided that information because, as the Director of the CEO put it, he was not part of the decision making process and because the Archbishop was so entrenched in his views about Searson there was no point telling Bishop Pell about the catalogue of complaints against him.
97. It is also important to keep firmly in mind why the 1989 Delegation meeting came about. The genesis of the 1989 Delegation meeting was not any action on the part of the CEO. The meeting was set up by the teachers' union representative, Mr Palmer.<sup>88</sup> Mr Palmer does not even recall the CEO representative being at the meeting.<sup>89</sup>
98. The genesis of the meeting is not a matter of mere trivia. It puts the 1989 Delegation in context. This was **not** a meeting called to discuss the sexual abuse of children by Searson. This was a meeting called by teachers because they were exasperated about having to deal with a difficult man in a workplace setting. So much is borne out by the way in which the 'list of grievances' is drafted. There are sixteen items on the list placed into three categories. The first category deals with 'Health and Safety'. It raises such mundane issues as:
- a. "Lights removed from sockets in classrooms";
  - b. "Windows secured closed";
  - c. "Gas heaters not working/serviced";
  - d. "Shade trees cut down";
  - e. "Lack of cleaning throughout school".
99. These were the five items at the top of the list. Children was the last category mentioned. Items fifteen and sixteen were: "Unnecessary use of children's toilets" and "harassment of children".<sup>90</sup> When one knows in 2016 of how evil Searson was,

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<sup>88</sup> Statement of Gerald Palmer dated 11 November 2015 at [12] (Exhibit 35-4).

<sup>89</sup> Statement of Gerald Palmer dated 11 November 2015 at [13] (Exhibit 35-4).

<sup>90</sup> Searson Bundle, tab 62 (Exhibit 35-2).

those items provoke a grimace. However, when those items are considered in the absence of any knowledge of Searson's sexual abuse, and in the context of being placed at the bottom of a list of otherwise minor complaints, one does not automatically conclude there was a significant risk of child sexual abuse. As for the unnecessary use of toilets, Mrs Briant from the CEO gave evidence that it did not create a suspicion in her mind at the time (that is in the late 1980s) that Searson may be a child abuser.<sup>91</sup> This is consistent with the visitation report from August 1989 (discussed above) that reported this issue in a manner and context which raised no alarm bells.

100. What is important, critically important even, when one is considering a list such as this is what those who prepared it had to say about it. It was the teachers who prepared the list and had the concerns. It was the teachers who were dealing on a day-to-day basis with the situation and who knew the children. It was the teachers who instigated the meeting through their union representative. For those reasons, the teachers' attitude at the 1989 Delegation meeting is the best gauge of the nature and seriousness of the grievances conveyed to Bishop Pell by the 1989 Delegation.

101. The fact that the teachers, the day-to-day carers of the children of Holy Family Doveton, said at the 1989 Delegation meeting that their **primary concern** was for the health of Searson; and that they wanted to give Searson a second chance, speaks volumes.

102. This is also consistent with the nature of complaints conveyed by the teachers at the time to Mrs Briant. Her evidence was that the complaints she received about Searson in 1989 and 1990 "were from staff members who felt they were being bullied or harassed or – yes, that was it basically".<sup>92</sup> There was certainly no concern expressed to her by the teachers' that Searson presented any risk to children of sexual abuse. Her evidence was as follows:

Q. You said you discussed these matters with the teachers; is that correct?

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<sup>91</sup> Briant T 19239.5-7.

<sup>92</sup> Briant T 19233.27-29.

A. No. I discussed what the teachers came to me about, and what they came to me about was Father's bullying and harassment of them. These issues [suspected abuse] were not raised with me.<sup>93</sup>

103. It is also telling that Mrs Briant's consideration of her role in assisting the teachers with these issues was "*normal stuff that you do as a consultant.*"<sup>94</sup>

104. A memorandum of Mr Lalor's to Father Doyle dated 20 November 1989 records the events of the 1989 Delegation meeting. Mr Lalor does not record himself as saying anything at the meeting. The note records what happened as follows:

The staff presented their grievances and indicated that their **main concern was for the health of Fr Searson**. The grievances they presented, except for this latest Mrs [redacted] incident, are all previously known by us. **The staff indicated that they didn't want industrial action** (this conflicts with what G. Palmer had previously stated).

Bishop Pell heard what the staff had to say and indicated he would consider what needed to be done.

105. There are two standout points from the meeting:

- a. the staff indicated that they did not want 'industrial action'; and
- b. their main concern was for the 'health of Fr Searson'.

106. If the teachers' concerns related to sexual assault of children, they did not convey that impression at the 1989 Delegation meeting.

107. Where Mr Lalor says the grievances were previously known to 'us', this must be a reference to the fact that barring the new incident (which was about a mother who had some difficulty with school fees), the CEO already knew of the issues because it had received the Staff Letter which Messrs Annett and Lalor had taken up with Searson three months earlier in August 1989. As discussed above, the context of the Staff Letter and the visitation was industrial complaint, not sexual complaint.

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<sup>93</sup> Briant T 19240.16-20.

<sup>94</sup> Briant T 19233.35.

## Cardinal Pell's Evidence

### Invitations to speculate

108. It ought be mentioned at the outset that Cardinal Pell was asked questions about many incidents involving Searson which occurred in the years prior to his appointment as Auxiliary Bishop in 1987. Cardinal Pell's answers were necessarily speculations given in 2016 and were not recollections from the 1980s. Whilst this is not a matter for controversy, it is submitted that care ought be taken in describing any finding with respect to this evidence. By way of example, CA Submissions include reference:

- a. to a letter in 1986 which Cardinal Pell 'agreed extended the concern about Searson',<sup>95</sup> and
- b. 'Cardinal Pell gave evidence that [the] notes, taken together with previous complaints about Searson, increased suspicions regarding Searson's conduct with girls.'<sup>96</sup>

109. It may be obvious to those who were involved in the Royal Commission's public hearings that the references to 'concerns' and 'suspicions' are not references to Father Pell's state of mind in the 1980s. However, there is a concern that if findings are made without appropriate qualification then there is a potential for such findings to be misconstrued. Accordingly, if any finding or reference is made to speculations made by Cardinal Pell about evidence he had no personal knowledge of at the time, that should be expressly stated to avoid any confusion.

### The 1989 Delegation

110. Cardinal Pell gave evidence about the 1989 Delegation. He was asked whether he sought information about the problems at Doveton and the list of grievances before meeting the Delegation. He said he spoke 'with Lalor ... or Dooley – it would have been Lalor.'<sup>97</sup> Later he gave evidence that he thought he had spoken with Lalor.<sup>98</sup>

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<sup>95</sup> CA Submissions at [418].

<sup>96</sup> CA Submissions at [346].

<sup>97</sup> Pell T 16373.29-37.

<sup>98</sup> Pell T 16375.15-16.



111. Cardinal Pell also made references to the CEO having briefed him in November 1989, but it is apparent when one reads the transcript of evidence that when Cardinal Pell is referring to the Education Office here he is using that to mean Mr Lalor only. There is no evidence that Bishop Pell spoke with anyone at the CEO other than Mr Lalor with respect to the 1989 Delegation. It could not have been Mr Dooley because by 1989 he had been replaced as educational consultant for the zone by Mrs Briant.

112. Cardinal Pell gave this evidence as to the information he was provided prior to meeting the 1989 Delegation:

Q. I take it the Education Office took you through the various matters I've taken you through this morning in relation to the dealings with Father Searson and the complaints against him at Doveton.

A. They certainly did no such thing in any comprehensive way at all.

Q. When you say "in any comprehensive way", in what way did they do it?

A. We discussed the list of grievances ... [T]here had been the resignation of Mr Sleeman. I asked what the story was there and I was told that Sleeman was also a difficult person and there were two sides to the story and, of course, he offered his resignation. So I had no adequate background briefing on the long-term problems at all.

Q. When you say "adequate background briefing on the long-term problems", are you speaking about the various matters I've taken you to this morning between the Catholic Education Office, the Archbishop and the Vicar-General?

A. Yes, and I'm not sure that I was informed about any of those particular letters and documents. I didn't even know they existed at that stage.

113. Cardinal Pell was also asked questions by the Chairman about the briefing he received prior to meeting the 1989 Delegation:

Q. And that briefing was given to you by which person?

A. I think it was Lalor.

Q. And as [Counsel Assisting] has taken you through the material, it is plain that the Education Office, in documentary material if nothing else, knew a considerable amount about Searson's misbehavior, didn't they?

A. That is correct.

Q. And I assume that, being briefed, you were told what they knew; is that right?

A. That's an incorrect assumption.

Q. Well, if you weren't told, are you telling me they deceived you?

A. Yes.

Q. So the Education Office decided, **through its individual person**, to deceive you is that right?

A. The Education Office, through the local person, did not give me anything like adequate information. **I'm not exactly sure how much of the information he was privy to.**

114. What is important to keep in mind is that no individual person at the CEO had the collective knowledge of the organisation. Mrs Briant gave evidence about the existence of two sets of files, one at the zone office in Boronia and one at headquarters which she never saw. The evidence also suggests a third file with respect to Doveton which was 'confidential'. Staff at the CEO during this time did not remain stagnant. Mrs Briant replaced Mr Dooley and Mr Annett had left for Canberra. The CEO records suggest that Mr Lalor had much less involvement with Searson than some others within the Education Office. It is not possible to know exactly what Mr Lalor knew, even if he remembered some 27 years later, because he was not fit to give evidence.

#### **Why is the CEO's 'motive' in their dealings with Bishop Pell relevant at all?**

115. CA Submissions spend some time addressing the question of a possible 'motive' of the CEO to deceive Bishop Pell. The Royal Commission was specially convened after Cardinal Pell gave evidence for a further sitting day to call four witnesses from the CEO about this issue. CA Submissions seek a positive finding that "the CEO officers had no motive to deceive Cardinal Pell and did not do so".<sup>99</sup>

116. A number of points are made about this submission:

- a. There is no evidence that any 'officer' of the CEO briefed Bishop Pell before the 1989 Delegation meeting apart from Mr Lalor.
- b. In effect, therefore, the submission seeks a finding with respect to Mr Lalor's motivations, being a witness not called before the Royal Commission.

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<sup>99</sup> CA Submissions at [619].

- c. From the evidence available, it appears that in 1989 Mr Lalor had nowhere near a complete knowledge of Searson's misconduct.
- d. Even accepting that Mr Lalor had no motive to deceive Bishop Pell, and did not deliberately withhold information from him, it does not change the fact that Bishop Pell was not provided with all of the information about Searson's misconduct. Nor was there anything wrong with Mr Lalor's non-disclosure with respect to this issue because:
  - i. No-one in the CEO considered Bishop Pell part of the official procedures; and
  - ii. The 1989 Delegation meeting arose in the context of staff concerns about workplace issues.
- e. Cardinal Pell's evidence acknowledging he was 'deceived' was in response to an invitation to speculate as to the reason he was not provided information. It is hardly probative evidence of any relevant fact for a witness to speculate, when requested to do so, about what was in someone else's mind when that other person took a course of action three decades earlier. As Cardinal Pell himself said, 'whether they saw not giving all the information as a deception is a question for them'.<sup>100</sup> And later, 'I don't know whether they saw it as a deception, but as it has been defined it was a deception.'<sup>101</sup>

117. Given that each of the CEO witnesses and Cardinal Pell were in complete agreement about what he was, or more accurately was not, told about Searson, and all available evidence confirms that Cardinal Pell was not briefed about Searson's history of improper conduct, why is the CEO's motive in their dealings with Bishop Pell relevant at all?

118. As is submitted elsewhere, Cardinal Pell does not resist a finding that the CEO did not deliberately hold back information from him. However, theories about motive and pejorative phrases such as 'deception' are best avoided. It is submitted that any finding should include only the relevant factual matter, namely, that Bishop Pell was not briefed about the long-term history of Searson's misbehavior.

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<sup>100</sup> Pell T 16376.11-15.

<sup>101</sup> Pell T 16380.35-39.

### Cardinal Pell should not be made the scapegoat for Searson

119. Cardinal Pell gave evidence that prior to the 1989 Delegation meeting he was informed that ‘certainly there were problems but they were not sufficient to remove Searson.’<sup>102</sup> He was also told in a non-specific way of an allegation of sexual misconduct “and the implication was that it could not be sustained”.<sup>103</sup>

120. One needs to be careful with the term ‘sexual misconduct’. It has a range of meaning. During his evidence Cardinal Pell also used the phrase ‘sexual misconduct’ in relation to allegations against Searson in a later period. When asked what he meant by the phrase, Cardinal Pell referred to three incidents he was using that phrase to mean:

- a. an incident involving frequenting the boys toilets and Searson using the excuse that it was to monitor graffiti;
- b. during confession having a youngster sit on his knee; and
- c. a child being invited to put their head on Searson’s knee during confession.<sup>104</sup>

121. These are not examples of serious sexual abuse of the type that BVC, for example, describes.<sup>105</sup> There is an ambiguity and an inappropriateness about the conduct described in the three examples, but they do not necessarily equate to sexual abuse. So when Cardinal Pell gave evidence of being informed in 1989 of a non-specific allegation of sexual misconduct, he was describing something in the nature of the incidents stated above. Counsel Assisting submits that in those circumstances Bishop Pell must have concluded that “more serious” action needed to be taken. It is unclear why this is the inexorable conclusion thrust upon the Royal Commission.

122. Cardinal Pell’s evidence that he was told the allegation could not be sustained is consistent with the position of other CEO officers recorded in file notes prior to the 1989 Delegation, for example:

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<sup>102</sup> Pell T 16376.1-4.

<sup>103</sup> Pell T 16377.46-47.

<sup>104</sup> Pell T 16567.30 - 46.

<sup>105</sup> Statement of BVC, dated 11 November 2015 (Exhibit 35-25).

- a. Mr Dooley's view that it was "difficult to take action" against Searson because concerns about him were "not substantiated";<sup>106</sup> and
- b. Mr Sleeman having apparently acknowledged that most of the events he had alleged had taken place "could not be substantiated", and it was Mr Annett's "believe (sic) that Father Searson was likely to remain at Doveton for the foreseeable future".<sup>107</sup>

123. Cardinal Pell gave evidence that:

- a. he 'took their word that [the allegations] had been dealt with appropriately';<sup>108</sup>
- b. he 'believed that they had been properly investigated';<sup>109</sup>
- c. he was told there was 'insufficient evidence to remove Searson';<sup>110</sup> and
- d. '... I was told that the Education Office had – the officials had spoken with the parties involved and the matter had been satisfactorily investigated ... I took them on their word at that.'<sup>111</sup>

124. This evidence is entirely unremarkable. The conclusion that there had been a satisfactory investigation is perfectly valid. The officers of the CEO were highly qualified and considerably experienced in education administration. Bishop Pell's involvement with respect to Searson was, on any view of the evidence, peripheral. This is borne out by the fact when one reviews all of the Archdiocese and CEO files tendered before the Royal Commission, and all of the oral testimony, Bishop Pell had no real exposure to the issues relating to Searson before the 1989 Delegation.

125. Cardinal Pell gave evidence that he did not have the capacity to act against Searson but he "took the material to the Vicar General and I think mentioned it at the Curia and certainly discussed it with the Archbishop."<sup>112</sup>

126. CA Submissions suggest that Bishop Pell should have taken 'direct action' including conducting an investigation into the veracity of the complaints, including in particular the non-specific allegation of sexual misconduct. This submission cannot

<sup>106</sup> Searson Bundle, tab 24 (Exhibit 35-2).

<sup>107</sup> Searson Bundle, tab 30 (Exhibit 35-2).

<sup>108</sup> Pell T 16379.27-28.

<sup>109</sup> Pell T 16380.9.

<sup>110</sup> Pell T 16381.9-17.

<sup>111</sup> Pell T 16380.14-20.

<sup>112</sup> Pell T 16381.25-32.

be sustained. It overlooks the context in which the complaints were made to Bishop Pell, namely their workplace setting and the primary concern of the teachers being for Searson.

127. Further, there was no evidence presented before the Royal Commission which would have led Bishop Pell to suspect that the CEO had not investigated an historical complaint properly and adequately. Given the absence of that evidence, how could it be suggested that he should not have accepted the assurances he received at face value? The reality is that, in the absence of all of the relevant information, including with respect to the quality of any investigation, there is no reason why someone in Bishop Pell's position would doubt the ability of the CEO officers to properly and adequately deal with the historical complaint.

128. CA Submissions seek a finding that:

Cardinal Pell and other senior Archdiocesan officials failed to exercise proper care for the children of Doveton.<sup>113</sup>

129. Such a finding unfairly makes Bishop Pell the scapegoat for failures with respect to Searson for which he was not to blame. He was not a Cardinal in 1989, he was an Auxiliary Bishop. The reference in the recommended finding to 'Cardinal Pell and other senior Archdiocesan officials' creates an appearance that Bishop Pell was at the apex of the organisational structure and had ultimate responsibility. That is a far cry from the evidence. As the CEO officials themselves were at pains to point out, Bishop Pell was not part of the decision making process.

130. The focus on Bishop Pell and the 1989 Delegation in the context of Searson's sordid history is extraordinary and unwarranted. Bishop Pell had no more than a peripheral connection to the events of Doveton in the 1980s. Searson caused trouble in one way or another for the people of Doveton for the better part of a decade. The 1989 Delegation meeting was a single event in the course of that decade. It related to workplace gripes raised by teachers with the support of a union representative, and was not a forum in which those teachers raised their concerns about child sexual abuse. The importance of that meeting, and Bishop Pell's involvement in it, is overly exaggerated.

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<sup>113</sup> CA Submissions at [622].

131. The Royal Commission has extraordinary powers of investigation. It has collated a large body of evidence through collation of documents and oral testimony. That evidence establishes the relatively minor involvement of Bishop Pell in the events of Doveton in the lead up and at the time of the 1989 Delegation, and it does not reflect the reality supported by that evidence to inject him into the story as a central participant.

132. CA Submissions do not recommend a concise finding with respect to Bishop Pell and the 1989 Delegation meeting, but make a range of submissions which would have an adverse reputational effect if sustained. It is submitted that the Royal Commission could not be 'comfortably satisfied' of making any adverse finding against Cardinal Pell with respect to the 1989 Delegation meeting.

### **The information imparted to Bishop Pell**

133. CA Submissions submit as follows:

[Bishop] Pell was briefed by CEO officials, including Mr Lalor, prior to meeting with the [1989 Delegation].<sup>114</sup>

134. This is not an accurate summary of the evidence. The evidence is that it was only Mr Lalor who briefed Bishop Pell about the 1989 Delegation, not a series of officials. CA Submissions continue:

... There is insufficient evidence available to the Royal Commission to make a finding as to the particular information that was conveyed to [Bishop] Pell in that briefing. ...

However, given the significant concerns held by the CEO, it is inconceivable that in briefing [Bishop] Pell, Mr Lalor deliberately held back **any relevant information**.<sup>115</sup>

135. CA Submissions do not elaborate upon whether the 'concerns held by the CEO' were known or understood by Mr Lalor, as opposed to others in the CEO. Nor is it clear what is meant by 'any relevant information'. One assumes this means a comprehensive briefing as to the complaints made against Searson and known collectively by officers of the CEO prior to the 1989 Delegation meeting.

136. Whilst CA Submissions suggest there is insufficient evidence to establish what information Bishop Pell received, that by no means prevents a finding about the

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<sup>114</sup> CA Submissions at [620].

<sup>115</sup> CA Submissions at [620]–[621].

information which Bishop Pell **did not** receive. Cardinal Pell's evidence was that he did not receive all of the relevant information, and did not receive an adequate briefing prior to the 1989 Delegation. His testimony is supported by the following evidence:

- a. Four witnesses were called from the CEO: the Director, the Deputy Director, and two Education Consultants. Every one of the four witnesses gave evidence that they **never** discussed Searson with Bishop Pell during his term as Regional Bishop.
- b. There was no documentary or witness testimony which contradicted Cardinal Pell's evidence that he did not receive a proper and adequate briefing about Searson.
- c. It was not the practice of the CEO to report to a Regional Bishop.
- d. The reporting structure of the CEO was such that complaints against Searson were reported up the chain to the Director, and the Director dealt directly with the Archbishop, and sometimes the Vicar General, but never the Regional Bishop.
- e. The 1989 Delegation meeting was not instigated by the CEO.
- f. The 1989 Delegation meeting was called by the union representative because of issues in the workplace, not child abuse.
- g. There is no record of Mr Lalor saying anything at the 1989 Delegation meeting, nor does Mr Lalor record in his file note of the meeting or any other file note that he gave Bishop Pell a full briefing.

137. It is submitted that the finding with respect to the 1989 Delegation should be:

*The 1989 Delegation was a group of teachers who met with Bishop Pell on 20 November 1989. The meeting was organised through the teachers' union representative, Mr Palmer. Mr Lalor of the Catholic Education Office also attended the meeting. At the meeting the teachers indicated that they did not want 'industrial action'; stated that their primary concern was for the health of Father Searson; and said that they wanted to give Father Searson a second chance. The Catholic Education Office did not provide Bishop Pell with a full history of complaints made against Father Searson or the long term problems with Searson with respect to Holy Family Doveton at or prior to the meeting.*



## Complaints against Searson - 1990 to 1993

### Later delegation

138. CA Submissions refer to evidence with respect to a delegation of parents in 1991 or 1992<sup>116</sup> and in particular a letter dated 26 August 1991 addressed to Monsignor Doyle. The evidence with respect to this matter is particularly limited. Cardinal Pell's evidence was that he was 'not sure I ever received' the letter but became aware of many of the accusations 'at some stage'.<sup>117</sup> Bishop Pell's knowledge was limited and did not include knowledge, for example, of the allegation relating to Searson 'observing boys going through showers on camp'.<sup>118</sup>
139. The difficulty is that no witness was called to give evidence about the delegation, and the dearth of evidence on the topic is expressly acknowledged in CA Submissions.<sup>119</sup>
140. It is noted that no finding is sought in CA Submissions with respect to Cardinal Pell and these matters. Nor could there be. Given the limited evidence available and the fact that these issues do not appear to have been a particular focus of inquiry, it is submitted that there is insufficient evidence to make any adverse finding with respect to Cardinal Pell about the above matters.

### Collective knowledge not the same thing as individual knowledge

141. CA submissions refer to a letter from Mr Lalor in July 1990 which considered correspondence from the consultant Mrs Briant, referred to a 'file relating to past events in Doveton' and reported the fact that over the years a number of personnel from the CEO had visited the school but little has improved.<sup>120</sup> Left unadorned, in the context of a Royal Commission into child sexual abuse, one might assume from that submission that the visitations related to abuse by Searson (i.e. the past events in Doveton) and there had been no improvement of that situation. However, the reference in Mr Lalor's letter to only a little improvement was not to any allegation of sexual misconduct. When Mr Lalor was writing about matters having not improved, he was referring to the condition of the school's infrastructure. Mr Lalor's note puts the matter in context as follows:

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<sup>116</sup> Pell T 16392.10.

<sup>117</sup> Pell T 16391.47 – 16392.2.

<sup>118</sup> See the passage of transcript at CA Submissions at [661].

<sup>119</sup> CA Submissions at [660].

<sup>120</sup> CA Submissions at [624].

Note the files show that the physical deficiencies of the school have been known for a number of years – but no one has been able to improve there (sic). Over the last 3–4 years many members of this office have visited the school ... but little has improved.<sup>121</sup>

142. The reference to little improvement has nothing to do with a complaint against Searson, but rather is a comment upon the first half of Mrs Briant's letter which relates to "the physical aspects of the school". It is only the second half of the letter which addresses the "school climate and learning environment". Therefore, the reference to little improvement is unconnected to the "past events at Doveton".

143. This is not a major issue per se, and it may seem pedantic to even mention it. However, it is submitted that it is capable of illustrating a further point, namely that there were many different issues at this time which related to Holy Family Doveton. Those issues included:

- a. the state of the school infrastructure, and the physical condition of the school which received considerable attention at the time. So much is borne out by the attention it receives in Mrs Briant's letter;
- b. Searson's non-sexual conduct, which ranged from being annoying to obscene; and
- c. issues with respect to Searson's sexual abuse.

144. It is important to consider the correspondence available to the Royal Commission in light of the fact that different people were dealing with a range of Searson and Doveton matters, and those people had varying degrees of knowledge. Mrs Briant who wrote the letter to Monsignor Doyle, for example, had no idea about any of Searson's sexual conduct notwithstanding her considerable involvement with the school in 1989 and 1990. The recipient of the letter, and the author of the forwarding letter to Frank,<sup>122</sup> was Monsignor Doyle, who had a quite different knowledge about Searson and Doveton to Mrs Briant. The point is that when reference is made to concepts such as 'Searson's conduct', or 'the issues in Doveton', or 'past events at Doveton', they meant different things to different people depending on their knowledge, involvement and understanding at the time. The contemporaneous material ought be read in that light. Similarly, it is submitted that any finding made by the Royal Commission as to what was 'known' about Searson

<sup>121</sup> Searson Bundle, tab 75 (Exhibit 35-2).

<sup>122</sup> Presumably Frank Rogan and not Archbishop Little.

and about Doveton must be precise, especially where evidence is used to found a finding against someone which might have reputational consequences.

#### Report in June 1992

145. CA Submissions<sup>123</sup> refer to a report made by the CEO in June 1992 and provided to Monsignor Deakin who was Vicar General at the time. CA Submissions state:

Given the serious nature of the matters raised in the document [Father Deakin] expects that consistent with his practice he **would have raised the matters with Archbishop Little or with [Bishop] Pell** as the Regional Bishop.

146. It is submitted that this is not a fair summary of the evidence. Bishop Deakin's actual evidence was as follows:

Although I do not recall seeing the [report], or being involved in any discussion about it, I have no reason to doubt that it would have been raised with me. The matters set out in the note are serious, and it was my practice at the time to raise serious matters with Archbishop Little, or with Bishop Pell as the relevant regional Bishop, **but I have no recollection of doing so.**<sup>124</sup>

147. Bishop Deakin's evidence is **not** that he *would have* raised the matter with the Archbishop or Bishop Pell. His evidence is that he had a practice, but he has no recollection that he followed his practice on this occasion. The evidence about his practice with respect to "serious matters" must also be considered in light of the more specific evidence Bishop Deakin gave in cross examination that he never once discussed a case of child abuse with the Archbishop.<sup>125</sup>

148. When Cardinal Pell was cross examined, it was not suggested to him that he had ever been told about the allegations contained in the report, by Monsignor Deakin or anyone else.

149. There is no evidentiary basis to find that Bishop Deakin would have provided the report Bishop Pell.

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<sup>123</sup> CA Submission at [674].

<sup>124</sup> Statement of Hilton Deakin dated 16 November 2015 at [98] (Exhibit 35-49).

<sup>125</sup> Deakin T 14080.21-28.

Curia meeting 1 October 1992

150. CA Submissions deal with children's accounts regarding Searson which were brought to the attention of Curia<sup>126</sup> at a meeting held on 1 October 1992. Quite fairly, CA submissions refer to the fact that Bishop Pell was not at that meeting because he had left Australia the week before the meeting and was overseas for almost two months.<sup>127</sup> A submission is ultimately made about what those *present at the meeting* should have done with respect to the matter.<sup>128</sup>
151. Given that Bishop Pell was not at this meeting, it is therefore unclear why his knowledge is referred to in the context of this part of the CA Submission.<sup>129</sup> The CA Submission is also incorrect to the extent that it submits that '[a]ll of the members of the Curia had, by the time the [October 1992] meeting, received serious complaints about Searson.'<sup>130</sup> The evidence relied upon for this submission as against Bishop Pell is his briefing with respect to the 1989 Delegation.<sup>131</sup> As is clear from the discussion about the 1989 Delegation above, Bishop Pell had not received a serious sexual complaint at all. Bishop Pell was informed of an historical complaint, in a generalised fashion. There is no evidence whatsoever that the complaint was serious, or that Bishop Pell was given to understand it was serious, and he was in fact informed that the complaint could not be substantiated.
152. Further, CA Submissions submit that "[n]one could have been in any doubt there was, at the very least, good reason to suspect that Searson had engaged in sexualised misconduct with children".<sup>132</sup> As this submission is made in the context of the 1 October 1992 Curia meeting which took place when Bishop Pell was overseas, it is assumed that the 'none' referred to is intended to mean *'none of those present at the meeting'*.
153. When Cardinal Pell was asked questions about the matter raised at Curia he was taken to the Curia minute from 1 October 1992 and asked this question:

Q. So to the attention of Curia, including yourself, in October 1992 were those frightening and horrendous accounts by those children in relation to Father Searson?

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<sup>126</sup> CA Submissions at [685].

<sup>127</sup> CA Submissions at [686].

<sup>128</sup> CA Submissions at [690].

<sup>129</sup> CA Submissions at [688].

<sup>130</sup> CA Submissions at [688].

<sup>131</sup> CA Submissions at [688].

<sup>132</sup> CA Submissions at [688].

A. I – I don't remember them being – that list being presented to Curia at all ...<sup>133</sup>

154. As soon as Counsel Assisting appreciated that Bishop Pell was not in the country for the Curia meeting, the record was quickly clarified.<sup>134</sup> However, it illustrates an important point: the *individual knowledge of a member of the Curia* is not the same thing as the *collective knowledge of the Curia*. Similarly, it does not follow that because there may have been an institutional failure with respect to a particular issue, all persons involved are responsible for that failure. Such a conclusion depends necessarily on individual knowledge and the circumstances of each case, and as the witnesses called in Case Study 35 repeatedly demonstrated, different people had different knowledge, even about the same incidents and events. The Julie Stewart incident is perhaps the best example. There were many different records in which that incident was documented, but almost all of them recorded the incident differently and in ways which conveyed varying levels of gravity or seriousness.

#### The knife incident, the Police and the canonical warning

155. On 7 April 1993, a Father Reynolds of the CEO made a file note of an allegation about Searson holding a knife to a girl on 2 April.<sup>135</sup> Apparently Searson's story was that it was done as a joke.<sup>136</sup>

156. On 15 April 1993, Monsignor Doyle noted that 'the matter has been discussed several times with the Vicar General, Archbishop and by Curia.'<sup>137</sup>

157. When Monsignor Doyle made that note less than two weeks had passed since the incident. Given the frequency with which Curia met, the reference in his note to 'several times' could not be understood as a reference to Curia. It has not been suggested otherwise. No minute of Curia recording any discussion about this incident was tendered to the Royal Commission, and it is not clear who was present or what information was discussed at the relevant meeting of Curia.

158. CA Submissions include an excerpt from the transcript of Cardinal Pell's evidence part of which bears repeating here:

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<sup>133</sup> Pell T 16394.32-38.

<sup>134</sup> Pell T 16398.32-38.

<sup>135</sup> Searson Bundle, tab 109 (Exhibit 35-2).

<sup>136</sup> Searson Bundle, tab 106 (Exhibit 35-2).

<sup>137</sup> Searson Bundle, tab 109 (Exhibit 35-2).

Q. And in not giving that advice [that Searson 'has to go'], the Curia would not have been doing its job properly, would it?

A. I – I think you would have to say that. **I would want to just check what sort of information was available to Curia** which would have enabled them to recommend or not to recommend that action be taken. I just can't remember, and I don't know what was said at the Curia to justify inaction.<sup>138</sup>

159. CA Submissions submit that the incident was "known to ... the Curia"<sup>139</sup> and that:

In light of the knife allegation, and the other information known to the members of Curia, each of them who was present at the meeting should have advised Archbishop Little to remove Searson.<sup>140</sup>

160. It is unclear which meeting of Curia counsel assisting is referring to and who was in fact present. Moreover, the reference in the submission to the 'other information known to the members of Curia' could not be understood as a reference to the same knowledge for each member. Monsignor Doyle did not address Curia<sup>141</sup> so his evidence does not assist and it is not clear what sort of information was in fact made available to Curia, let alone evidence which would allow a level of 'comfortable satisfaction' to make an adverse finding about the Curia collectively, or more precisely and appropriately, its members individually.

161. True it is that Searson was not removed as a result of this incident. However, that does not mean that there was a complete failure by the Archdiocese to respond.<sup>142</sup> The evidence establishes, among other things, the following events:

- a. the principal of the school, Mr Adams, was informed of the incident on the morning it occurred and 'spoke to the two students immediately',<sup>143</sup>
- b. Mr Adams then rang Father Reynolds who informed the Director of the CEO, the Vicar General and the Archbishop's secretary;<sup>144</sup>
- c. Father Reynolds phoned Mr Adams back and told him to inform police, which he did;<sup>145</sup>

<sup>138</sup> CA Submissions at [706].

<sup>139</sup> CA Submissions at [709].

<sup>140</sup> CA Submissions at [711].

<sup>141</sup> Doyle T 13424.18-20.

<sup>142</sup> Cf. CA Submission at [713].

<sup>143</sup> Searson Bundle, tab 109 (Exhibit 35-2).

<sup>144</sup> Searson Bundle, tab 109 (Exhibit 35-2).

<sup>145</sup> Searson Bundle, tab 109 (Exhibit 35-2).

- d. the police took a statement from the student concerned but were not able to proceed without parental consent which was not given;<sup>146</sup>
  - e. Father Reynolds spoke with the girl's father at 5 pm on the day of the incident and 'strongly encouraged him to allow the police to proceed with charges', but later that night when the parents found out Father Searson had 'denied any knowledge' of the incident they decided not to proceed;<sup>147</sup>
  - f. the Vicar General spoke with Senior Constable Corrigan of the Police Schools Involvement Programme and with Senior Constable Howard of Doveton Police who were handling the matter;<sup>148</sup>
  - g. The Archbishop requested the police to visit the parents of the student concerned;<sup>149</sup> and
  - h. on 7 April the Vicar General rang the Director of the CEO and spoke of the difficulty with the fact that the police were not laying charges, and of the 'danger to children as the primary concern'.<sup>150</sup>
162. The immediate response to the incident was to involve the police and encourage charges against Searson. There was obvious concern for the victim and for other children of the school. Clearly the hope of those from the Archdiocese who were involved was that the police would charge Searson with a criminal offence. This was at least the third time the police had been notified of an allegation against Searson, the earlier ones being the anonymous letter sent to Victoria Police on 18 October 1990<sup>151</sup> and Julie Stewart's signed police statement dated 27 December 1990.<sup>152</sup> None of those investigations led to Searson being charged. The fact that Searson was not charged in relation to the knife incident was obviously a source of frustration for Monsignor Doyle who had long wanted Searson removed. When he found out that the police were not going to lay charges against Searson with respect to the knife incident he sought legal advice from a respected law firm. The letter of advice, which is dated 3 May 1993, includes the following instructions:

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<sup>146</sup> Searson Bundle, tab 109 (Exhibit 35-2).

<sup>147</sup> Searson Bundle, tab 109 (Exhibit 35-2).

<sup>148</sup> Searson Bundle, tab 110 (Exhibit 35-2).

<sup>149</sup> Searson Bundle, tab 110 (Exhibit 35-2).

<sup>150</sup> Searson Bundle, tab 109 (Exhibit 35-2).

<sup>151</sup> Searson Bundle, tab 76 (Exhibit 35-2).

<sup>152</sup> Searson Bundle, tab 84 (Exhibit 35-2).

You have asked me in relation to this alleged offence to comment on a claim by the police that they are unable to charge Father Searson without the girl's parents permission.<sup>153</sup>

163. As Monsignor Doyle's file note of 15 April recorded, a decision had been made "that in the absence of action by the Police, and the unwillingness of the parents to pursue the matter, nothing could be done about this incident."<sup>154</sup> That does not mean that the CEO, and in particular Monsignor Doyle, and others within the Archdiocese, were not motivated to find a way to move against Searson.

164. On 25 June 1993, a few weeks after the legal advice had been received, an opportunity presented itself in the form of a complaint about Searson defaming a student. Monsignor Doyle gave this evidence of what happened with respect to these matters:

Q. ... there was a further complaint about Father Searson of a relatively trivial nature, where he had defamed one of the students who had offended him by refusing to go to mass, and he lied about the student to another family and that upset a couple of the boys; do you remember that from your review of the documents?

A. Yes.

Q. That resulted in Father Searson being presented with a canonical warning for the first time; is that right?

A. Yes.

Q. And you were in fact present with Monsignor Cudmore and Father Searson when that warning was administered?

A. Yes.

...

Q. Did you discuss with the Vicar-General, that is, Monsignor Cudmore, why the complaint had prompted a canonical warning?

A. **I think it was an opportunity to get some action about Father Searson.**

Q. Why was that incident seen as an opportunity when no others had?

A. **I think it was a bit like the Al Capone thing, we were prepared to get him on something.**

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<sup>153</sup> Searson Bundle, tab 113 (Exhibit 35-2).

<sup>154</sup> Searson Bundle, tab 109 (Exhibit 35-2).



Q. But do you remember what was seen as distinctive about this, in terms of the available evidence for the nature of the offence?

A. Well, we had the parents that were prepared to come forward.

Q. But I take it from your comparatively Al Capone situation, you recognised that there was some absurdity about Father Searson, a priest who had put a knife to the chest of girls and held a gun to the head – or pointed a gun at students and been reported as sexually molesting children, that he was given a warning for this offence?

A. Yes.

Q. From that period, Father Searson was treated as being under a canonical warning effectively not to re-offend; is that the position?

A. That's so, yes. <sup>155</sup>

165. Monsignor Doyle's evidence is important in understanding his reaction, and the response of the Archdiocese, to the knife incident. There was a concern held by some at least, rightly or wrongly, that action could not be taken against Searson in the absence of criminal charges and parents who were willing to take action. Therefore, when Searson stepped out of line, in a 'relatively trivial' way to adopt the words of Counsel Assisting, and the parents wanted action to be taken, a canonical warning was administered to Searson.

166. A canonical warning is, and was considered then, a serious disciplinary measure against a priest. It is obvious from the evidence of Monsignor Doyle that this canonical warning was not because of the minor infraction in June. The events of June provided a convenient pretext to sanction Searson for the knife incident in April and to place him on probation.

167. It is submitted, therefore, that to the effect that CA Submission infers that there was a failure by the Archdiocese to act in relation to the knife incident, such a submission ought be rejected. The reality of the situation and the evidence as presented before the Royal Commission is that it was the knife incident, and not the relatively trivial complaint, which was the real impetus that prompted the canonical warning.

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<sup>155</sup> Doyle T13427.35-13428.37.

## Response of the Archdiocese

168. CA Submissions submit in relation to Bishop Pell that:
- ... as [a senior member] of the Archdiocese and of the Curia and PAB [he] personally received allegations of aberrant behavior by Searson. ... [Bishop] Pell was told of an allegation of sexual misconduct in 1989, albeit on his evidence in a 'non-specific' way.
169. Cardinal Pell's evidence with respect to the receipt of the non-specific complaint was uncontradicted. Further, the absence of specificity is not the only qualification with respect to the complaint. The allegation may have been communicated in 1989, but it was an historical allegation and Bishop Pell was given to understand that it could not be substantiated. This infers that the CEO had given the complaint some consideration. Cardinal Pell expressed that in retrospect he might have been more pushy in the manner he handled the Searson matter, but there was nothing in his dealings with the CEO which would have raised concern that they had not provided the matter due and proper consideration. The criticism levelled against Bishop Pell, expressed a number of different ways in CA Submissions, is that he failed to take some direct action given the knowledge imparted to him by the CEO.
170. In reality, Bishop Pell is being criticised because he should have refused to accept the truth or validity of the position taken by the CEO; and should have taken it upon himself to 'pressure test' their investigation and conduct his own inquiry into the historical allegations. The clear evidence is that Bishop Pell was not involved in the decision making process or administrative functions of the CEO. It was not his job to audit or inquire into the workings of the CEO. But more importantly, there was nothing said to Bishop Pell which would have indicated to him:
- a. that the CEO had not acted appropriately and adequately with respect to the previous allegation; or
  - b. any hint of a problem in the way the CEO had handled the matter.
171. The only factor which makes these matters apparent is hindsight. When everything is learned about an historical event, and about what went wrong, it makes it harder to imagine what it would have been like for a person to possess only a fragment of the information which has come to light. We now have a far greater appreciation of what happened in Doveton. That is the function of a Royal Commission. It gathers witnesses together, it collates documents, and it has broad

powers of investigation. The assessment of one's historical knowledge is a fraught process, not only because of the corrosive effects of time on the quality of the evidence, but also because of the difficulty in assessing what an individual knew at a time in the past, without being influenced by what may seem obvious when all the pieces of the puzzle have been put together.

172. The evidence must be scrutinised with precision. In respect of Bishop Pell's actual knowledge about Searson, the evidence is instructive. For example, CA Submissions list the more serious allegations made against Searson.<sup>156</sup> A series of specific examples of serious sexual misconduct are referred to in the list, namely:

- a. the rape of a woman in 1974;
- b. the Julie Stewart incident in 1985;
- c. the molestation of a girl in a car in 1992; and
- d. sexualised conduct with Grade 6 boys in 1992.

173. Each of these incidents is disturbing. None was made known to Bishop Pell during his time under Archbishop Little.

174. Any decent person would wish that they had done more to arrest the conduct of Father Searson in the retrospective knowledge of the sexual harm he inflicted on his victims. He was a truly appalling person. The expression of a lament about not having asked more questions is a very different thing to having knowledge or understanding of Searson's sexual perversity at the relevant time. If only Bishop Pell was told more about Searson. If his time as Archbishop of Melbourne is any guide, Searson was not a man whom Cardinal Pell was minded to tolerate.

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<sup>156</sup> CA Submissions at [777].

## Removal of Searson

175. By the mid 1980s Monsignor Doyle had formed the view that Searson should be removed from his parish. Doyle and other personnel at the CEO had recommended to Archbishop Little that decisive action be taken to remove Searson.<sup>157</sup>

176. It is suggested in CA Submissions that, in effect, Bishop Pell did not fulfill his responsibilities with regard to Searson. The tenor of that submission is at odds with what is known about the way in which Searson was removed from ministry.

177. There is no doubt that when George Pell became the Archbishop of Melbourne he had both a responsibility and the authority to deal with Peter Searson. Monsignor Doyle was still the Director of the CEO when Archbishop Pell replaced Archbishop Little. Monsignor Doyle's evidence as to the approach taken by each Archbishop to Searson put the matter in stark relief:

[DUGGAN] Q. Now, you were still the director of the education office in 1996 when Archbishop Pell took over?

A. That's correct.

Q. And you would have been aware that, in the first months of him taking that office, he appointed the Independent Commissioner?

A. That's correct.

Q. And one of the roles of the Independent Commissioner was to investigate complaints of sexual abuse by priests?

A. That's correct.

...

Q. ... Archbishop Pell took over in mid-1996 and by March 1997 Searson had been suspended?

A. That's correct. That's right.

Q. That was the sort of action, wasn't it, that you had been waiting a decade to occur?

A. That's right.

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<sup>157</sup> Doyle T 19203.11-20.

Q. So you must have been both pleased and relieved not only for yourself but, more importantly, for the people of Holy Family Doveton, that that action had been taken by Archbishop Pell; is that right?

A. Mmm, yes.

Q. Now, had Archbishop Pell been the Archbishop of Melbourne in the mid-1980s and you recommended to him, as you did Archbishop Little, that Searson be removed, based on those events, would you agree that Searson would likely have been removed a decade earlier?

A. Yes.<sup>158</sup>

178. What this illustrates is Archbishop Pell's propensity and willingness to investigate child sexual abuse by priests in general, and by Searson in particular. This conduct is completely at odds with the suggestion that Bishop Pell 'failed to exercise proper care' in responding to the 1989 Delegation some years earlier.

179. When it came to remove Searson from his ministry, he did not go willingly. Archbishop Pell did not equivocate: Searson was given short shrift. The record of a meeting between Archbishop Pell and Searson on 14 May 1997 records the following exchange:

Father Searson: Is that irrevocable?

Archbishop: It is.

Father Searson: One doesn't want to upset the whole process. There are aspects I can't understand. I haven't known you well – you came from outside the diocese, and came in here as our Archbishop. We had a very good working relationship really. All of a sudden - down came the curtains. It became bitter. I asked for reasons. They were not given. I can't understand. Whatever they have said is fiction. I'm sure of that. The Police investigated and they don't want to take any action. Archbishop Little also decided not to proceed. In spite of all that, Mr O'Callaghan took the attitude all the way through ... I feel helpless now.

Archbishop: I need to know whether you are going to retire or not.

Father Searson: I'm prepared to step aside. I would agree of retirement. Not in Doveton, to be fair to the parish and myself. There has been too much said about that. I presume the Eighth Commandment still operates. There is grave restitution needed to be had. All I want to do is get on with my life as a priest.

Archbishop: You don't seem to understand. Do you accept my invitation to retire and resign or not?

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<sup>158</sup> Doyle T 19203.36-19204.26.

Father Searson: I'm prepared to step aside. The conditions preclude me being a productive priest.

Archbishop: They certainly do. Retire and resign.

Father Searson: And do nothing?

Archbishop: Do nothing.

Father Searson: You are asking me to step down and do nothing for doing nothing. Resignation is no problem, but allow me any opportunity to do a little.

Archbishop: I'm inviting you to resign. If not, I am proceeding canonically to remove you. I have already taken civil and canonical advice on that.

Father Searson: What about working in another diocese?

Archbishop: Any bishop would consult me and I would advise him of the findings of the Independent Commissioner.

Father Searson: But he could know that the Independent Commissioner was wrong. So is working in another Diocese a possibility? It does not require your consent.

Archbishop: It is outside my writ. But you certainly won't get a clearance from me.<sup>159</sup>

180. A finding is sought as follows:

*Had George Pell been the Archbishop of Melbourne in the mid-1980s and Monsignor Doyle recommended to him, as he did to Archbishop Little, that Searson be removed, it is likely Searson would have been removed from his ministry in the mid-1980s.*

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<sup>159</sup> Searson Bundle, tab 162 (Exhibit 35-2).

## D. RONALD PICKERING

### The Bishop Jukes' inquiry

181. The minutes of the Curia meeting on 11 November 1993 record that an inquiry had been received from an Auxiliary Bishop in Southwark, UK, seeking an indication as to whether Pickering was in 'good standing'. The minutes record the suggestion that the Archbishop reply to Bishop Jukes by telephone. CA Submissions refer to this as 'the arrangement'.

182. CA Submissions submit that:

- a. '[I]t should be inferred that the arrangement ... was to avoid there being a written record of the discussion and advice given to Bishop Jukes';<sup>160</sup> and
- b. 'That arrangement was made with knowledge that Pickering was a sexual offender'.<sup>161</sup>

183. This is a most serious allegation. Whilst the CA Submission does not qualify precisely whose 'knowledge' the arrangement was made with, the obvious inference is that the relevant knowledge is that of the members of Curia. Therefore, if the finding recommended by Counsel Assisting was made by the Royal Commission, it has the potential to do significant damage to the reputation of those members of Curia who were present when the alleged 'arrangement' was supposedly made.

184. CA Submissions note that whilst the 'minutes of meeting do not record who was in attendance, however, Cardinal Pell [and others] ... were members of the Curia at this time.'<sup>162</sup> Accordingly, Cardinal Pell is one of those members of Curia who would suffer an adverse reputational finding if the submission made by Counsel Assisting was upheld.

185. There are two limbs to the CA Submission, namely, the arrangement to avoid a record of the conversation; and the arrangement being made with knowledge of Pickering's sexual offences. Each is dealt with in turn.

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<sup>160</sup> CA Submissions at [1172].

<sup>161</sup> CA Submissions at [1172].

<sup>162</sup> CA Submissions at [1164].

The alleged arrangement

186. In support of its submission, CA Submissions relies on two witnesses, namely, Archbishop Hart and Bishop Connors.

187. Archbishop Hart's evidence is of no weight. He was not part of the Curia in 1993 and gave no direct evidence about the meeting or the inquiry with Bishop Jukes. He is in no better position to speculate as to why Bishop Jukes was to be contacted by telephone than the Royal Commissioners.

188. The answers of Bishop Connors on the topic were not by way of independent recollection as to the arrangement, but were propositions accepted as a matter of logic. For example, Bishop Connors' evidence was that he accepted from the proposition put to him about the arrangement that the 'conclusion could be made'. Bishop Connors was not even asked if he was present at the meeting on 11 November 1993, or if he had any recollection of the meeting.

The alleged 'knowledge'

189. The evidence relied upon in CA Submissions to fix the Curia with knowledge of the arrangement comes from Bishop Connors. CA Submissions set out his evidence with respect to what was known about Pickering's standing at the time of the meeting:

Q. And he wasn't in good standing, was he?

A. No, he certainly was not.

Q. And that was known by at least you and Archbishop Little, **and according to your previous evidence, almost certainly by others.**

A. Yes, I would be **confident nearly all of them knew** that Father Pickering was not in good standing.<sup>163</sup>

190. The difficulty is that the question and answer quoted above, and relied upon in CA Submissions, conflates two separate time periods. When Counsel Assisting asked the question by reference to Bishop Connors' previous evidence, it was a reference to the following passage:

Q. Turning to tab 18, these are the minutes of the Personnel Advisory Board **on 5 March 1986.**

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<sup>163</sup> CA Submissions [1167].



A. Yes.

...

Q. Do you see that present is Archbishop Little?

A. Yes.

Q. And yourself as Vicar-General, as well as various others?

A. That's right, yes.

...

Q. At this meeting ... it's likely, isn't it, that the true reasons for Father Pickering being away for three months would have been disclosed?

A. I would hope it was disclosed, it should have been disclosed, but I can't be certain ...

Q. It's likely, isn't it, that **others at the meeting were aware**, either through the meeting or discussions outside the meeting about the serious complaint against Pickering?

A. Almost certainly **they would have understood**, they would have had some knowledge of Father Pickering.

Q. Turning to tab 48, these are the Curia minutes for **11 November 1993**  
...<sup>164</sup>

191. It is clear from this passage that the 'previous' evidence of Bishop Connors about knowledge held 'almost certainly by others', was a reference to a PAB meeting in 1986, some seven and a half years before the Curia meeting in question. The constitution of the 1986 PAB and the 1993 Curia were obviously different. Bishop Connors' evidence that 'nearly all of them knew' ought therefore be taken as a reference to the 1986 PAB members. At the very least, it highlights the difficulty with a witness giving evidence not about conversations, or about matters they have observed, but entertaining hypotheses about what other people 'would have known'.

192. In court proceedings evidence of someone's opinion about what was said at a meeting is inadmissible unless they were actually there.<sup>165</sup> That is because, in the usual course, a witness must have 'personal knowledge' of an event to be able to give evidence about it. That is, under the uniform Evidence Acts, ordinarily a person can only express opinions about facts which they 'saw, heard or otherwise perceived'

<sup>164</sup> Connors T 14004.45–14006.5.

<sup>165</sup> See for example *Competition and Consumer Commission v Yazaki Corp (No 2)* [2015] FCA 1304.

about the relevant matter or event.<sup>166</sup> These evidentiary rules exist for good reason. Someone's opinion about matters they have not witnessed has such low probative value it is insufficient to form findings of fact, particularly for the type of serious finding recommended by Counsel Assisting. The rules of evidence do not bind a Royal Commission, but that does not mean the Royal Commission should not be guided by the policies and principles underpinning those rules. In *R v The War Pensions Entitlement Appeal Tribunal; Ex parte Bott* (1933) 50 CLR 228 at 256 Evatt J observed:

Some stress has been laid by the present respondents upon the provision that the Tribunal is not, in the hearing of appeals, "bound by any rules of evidence." Neither it is. But this does not mean that all rules of evidence may be ignored as of no account. After all, they represent the attempt made, through many generations, to evolve a method of inquiry best calculated to prevent error and elicit truth. No tribunal can, without grave danger of injustice, set them on one side and resort to methods of inquiry which necessarily advantage one party and necessarily disadvantage the opposing party. In other words, although rules of evidence, as such, do not bind, every attempt must be made to administer "substantial justice."

193. The submission made about Bishop Connors' evidence in CA Submissions is that his 'confidence that nearly all of them knew that Pickering was not in good standing is well founded and reflects the true position'.<sup>167</sup> This true position is a reference to the knowledge allegedly held by Curia as at 11 November 1993. The submission cannot be sustained.

#### The finding sought by Counsel Assisting

194. The recommended finding is that the arrangement was made with knowledge that Pickering was a sexual offender. It appears in a section under the heading 'Curia Meeting – 11 November 1993' and reference is made to the members of the Curia at the time of the meeting. It is clear that the finding is intended to relate to all of those members.
195. Given the seriousness of the allegation made, it is surprising that of the three members of Curia at that time who gave evidence to the Royal Commission, only Bishop Connors was asked a question about it, and even then no evidence was adduced to the effect that he actually attended the meeting. Neither Cardinal Pell nor Bishop Deakin was asked a single question about this meeting, nor was the

<sup>166</sup> See s78 of the *Evidence Act* and the discussion by the High Court in *Lithgow City Council v Jackson* (2011) 244 CLR 352.

<sup>167</sup> CA Submissions at [1170].

alleged arrangement put to them or the fact that it was going to be alleged that the arrangement was hatched by Curia with knowledge of Pickering's sexual offending in mind.

196. A further matter is relevant: Bishop Pell was not at the Curia Meeting on 11 November 1993.
197. Bishop Pell's passport<sup>168</sup> confirms that on 9 November 1993 he departed Australia from Melbourne, and arrived in Hong Kong where he stayed until he departed there on 13 November 1993. Bishop Pell did not return to Australia until he arrived back in Sydney on 30 November 1993.
198. Clearly the finding sought by Counsel Assisting could not extend to Bishop Pell. However, it is not always possible to demonstrate matters with reference to passport entries. It highlights the danger in making blanket findings some twenty three years after the event.
199. As was held by McHugh J in *Brisbane South Regional Health Authority v Taylor* (1996) 186 CLR 541 in the context of civil litigation:

For nearly 400 years, the policy of the law has been to fix definite time limits (usually six but often three years) for prosecuting civil claims. The enactment of time limitations has been driven by the general perception that "(w)here there is delay the whole quality of justice deteriorates." Sometimes the deterioration in quality is palpable, as in the case where a crucial witness is dead or an important document has been destroyed. But sometimes, perhaps more often than we realise, the deterioration in quality is not recognisable even by the parties. Prejudice may exist without the parties or anybody else realising that it exists. As the United States Supreme Court pointed out in *Barker v Wingo*, "what has been forgotten can rarely be shown". So, it must often happen that important, perhaps decisive, evidence has disappeared without anybody now "knowing" that it ever existed. Similarly, it must often happen that time will diminish the significance of a known fact or circumstance because its relationship to the cause of action is no longer as apparent as it was when the cause of action arose. A verdict may appear well based on the evidence given in the proceedings, but, if the tribunal of fact had all the evidence concerning the matter, an opposite result may have ensued. The longer the delay in commencing proceedings, the more likely it is that the case will be decided on less evidence than was available to the parties at the time that the cause of action arose. [Citations omitted].

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<sup>168</sup> Relevant extracts of which are annexed to this submission marked A.

## E. WILFRED BAKER

### CA Submission about Baker

200. CA Submissions submit that, based on Bishop Connors' evidence:
- a. 'other members of the body present at [the PAB meeting on 8 April 1992], or Curia, **would have known** what he knew' about Baker;<sup>169</sup> and
  - b. Bishop Connors' ... **expectation** ... that by 1992 all members [of the PAB] were aware of [Baker's] offence in 1978 should be accepted'.<sup>170</sup>
201. Of course, in the context of the CA Submission made about what 'would have' been known about Baker, Evatt J's cautionary observation about the rules of evidence (set out in the Pickering section above) is overlaid by the principles of *Briginshaw*, and in particular the statement that reasonable satisfaction of the relevant matters should not be produced by inexact proofs and indefinite testimony. *Briginshaw* was a matrimonial case and in issue was a question of adultery. It is submitted, however, that when Dixon J laid down the principle which has been applied ever since, and referred to 'inexact proofs' and 'indefinite testimony', that was a reference intended to include the type of evidence given by someone about their 'expectations' of what might have happened and what someone 'would have known', particularly when that evidence is given about matters having occurred a quarter of a century earlier.
202. There is no discussion in CA Submissions with respect to Baker, or any other submission, as to how the principles of *Briginshaw* should be applied to the evidence of Bishop Connors when considering the serious allegations made against the members of the PAB. This consideration is a critical part of the fact finding process.
203. One does not need to go beyond the pronouncements of the members of the Court in *Briginshaw* for the relevant statement of principle to be applied to Bishop Connors' evidence.
204. Latham CJ said that:
- '[n]o court should act upon mere suspicion, surmise or guesswork in any case.'<sup>171</sup>

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<sup>169</sup> CA Submissions at [925].

<sup>170</sup> CA Submissions at [934].

205. That principle applies equally to findings made by a Royal Commission. It applies to the evidence given by Bishop Connors about what was in other people's minds at meetings in 1992. It is stressed that this is not a criticism of Bishop Connors, but rather that his evidence cannot be used in the way recommended in CA Submissions.

206. Rich J held that:

In a serious matter like a charge of adultery the satisfaction of a just and prudent mind cannot be produced by slender and exiguous proofs or circumstances pointing with a wavering finger to an affirmative conclusion.<sup>172</sup>

207. Dixon J held that:

"... the importance and gravity of the question make it impossible to be reasonably satisfied of the truth of the allegation without the exercise of caution and **unless the proofs survive a careful scrutiny and appear precise and not loose and inexact.** Further, circumstantial evidence **cannot satisfy a sound judgment of a state of facts if it is susceptible of some other not improbable explanation.**"<sup>173</sup>

208. The evidence of Bishop Connors is certainly not evidence which 'appear[s] precise'. It is indeed 'loose and inexact'.

209. It is with these principles in mind that one turns to give the evidence appropriate 'scrutiny' to see what proof it is capable of producing.

#### Archbishop Little's approach to information

210. Bishop Connors gave this evidence about the constraints on the disclosure of information imposed by Archbishop Little during his time as Vicar General:

A. ... Sometimes [the Archbishop] might remind me of the confidentiality of the matter we were discussing.

...

Q. And, if he would be reminding you of the confidentiality of matters, that was that **you were free to discuss them with him but not with others; is that right?**

A. **That would be my understanding.**

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<sup>171</sup> *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 343.

<sup>172</sup> *ibid* at 350.

<sup>173</sup> *ibid* at 368.

Q. Did that include Auxiliary Bishops; that is, you weren't free to communicate those matters with Auxiliary Bishops?

A. **I hope that I was faithful to that instruction, that I was to keep it confidential between himself and myself.**

Q. That would have put a put a significant constraint on your ability to discuss matters at Curia meetings, wouldn't it?

A. **Sometimes it would**, but then again, the Archbishop might feel free to raise that particular issue with the meeting of members of Curia.

Q. **But if the Archbishop didn't take the lead, you wouldn't feel free to disclose –**

A. **I would not feel free, correct.**

Q. So there might be discussions with others at the Curia meeting and you knew they weren't privy to certain information?

A. I would leave it to the Archbishop to raise those issues himself; I would not raise them.<sup>174</sup>

211. On another occasion, Bishop Connors gave evidence about Archbishop Little's practice throughout the time Bishop Connors worked with him:

Q. Did he talk to you about the difficulties he was having from time to time in his job as Archbishop?

A. I can remember that he would sometimes say to me, "I tell you that but it's confidential, don't tell anybody else", **that I do remember** on occasions.

Q. **What was the topic upon which he would say "don't tell anyone else"?**

A. **It would be a concern with the behavior of a priest.**

Q. So, he shared with you his concerns about some of his priests?

A. From time to time, he would do that.

Q. What sort of concerns did he have about priests particularly in the early days when you were secretary?

A. I can't remember him raising any issue of sexual assault of children until **the matter of Wilfred Baker came to our attention.**<sup>175</sup>

212. This is persuasive evidence to the effect that child sexual abuse matters, including that of Baker's, were kept confidential at the instruction of Archbishop Little.

<sup>174</sup> Connors T 13519.1-38.

<sup>175</sup> Connors T 13929.15-33.

Bishop Connors felt an obligation to be faithful to that instruction, and that included not informing the PAB or Curia members about such complaints.

213. This is entirely consistent with Bishop Deakin's evidence about the extraordinary strictures Archbishop Little placed around the flow of information on abuse allegations made against priests. When Bishop Deakin started as Vicar General in 1987 the Archbishop sat him down and said:

"You get some complaints ... Now, with the complaints, send them on through my secretary unless you need to tell me. Now, what I want you to tell me about are complaints dealing with priests and sexual behaviour. ... There's one form of complaint you tell me verbally, and do it at breakfast or in the dinner at night, and that's the end of it; there's no discussion, no analysis, no further", and that was paedophilia.<sup>176</sup>

214. Archbishop Little's demands for confidentiality bears directly upon the probability or otherwise of the PAB or Curia being informed of child sexual abuse complaints made against Baker.

#### Bishop Connors' evidence about the Curia and PAB Meetings

215. Baker clearly had a serious problem with alcohol.

216. Bishop Connors' evidence about the Curia meeting on 20 June 1989 is that he understood it was not necessary for the 1978 Gladstone Park complaint to be raised because the reason for Baker's 'therapeutic' leave was alcohol related.<sup>177</sup>

217. By the 19 November 1991 Meeting Baker was unable to cope and again the issue was alcohol.<sup>178</sup> As is recorded in the 8 January 1992 PAB minutes Baker appears to have made some progress with his alcohol issues and is recorded as being 'very well'.<sup>179</sup> Bishop Connors understood this report to be in relation to alcohol.<sup>180</sup>

218. With respect to the PAB meeting on 19 November 1991, Bishop Connors gave evidence as follows:

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<sup>176</sup> Deakin T 14080.10-19.

<sup>177</sup> See Connors T 13965.27-43.

<sup>178</sup> Connors T 13967.4-9.

<sup>179</sup> Baker Bundle, tab 24 (Exhibit 35-8).

<sup>180</sup> Connors T 13969.19.

Q... the fact was that the Personnel Advisory Board knew well of [Baker's] deficiencies, didn't it, in relation to Gladstone Park and Eltham and alcohol consumption?

A. Certainly in Eltham alcohol was the problem; in Gladstone Park I'm not so certain, **but I don't know whether the Archbishop did raise the issue of the offence that Father Baker committed when he was at Gladstone Park.**

... Q. And if he didn't raise it, and you thought it was relevant to the decision at hand, would you have raised it?

A. **I do believe I wouldn't have raised it, but on reflection I should have raised it ...**<sup>181</sup>

219. On 8 April 1992 the PAB met. Bishop Pell was late. Baker was item 14 of 22 according to the minutes so it is unclear whether Bishop Pell was present at the time the Baker item was dealt with by the meeting. The minutes record that the 'Condition of [Baker] discussed. Unsatisfactory in some areas – sit on it.' As CA Submissions acknowledge, Bishop Connors read this as a reference to alcohol.<sup>182</sup> At the following PAB meeting, on 6 May 1992, Baker was appointed to North Richmond parish.

220. Cardinal Pell's evidence about his knowledge of Baker was as follows:

Q. Did it come to your attention, prior to or at this meeting [6 May 1992], that there had been a previous complaint against Baker?

A. No.

Q. So when you participated in this meeting in relation to advising on the movement of parish priests, you were not aware of a prior complaint against Baker?

A. No, I believe not.

Q. Archbishop Little hadn't advised you of that, either in the meeting or before the meeting?

A. No.

Q. And Reverend Connors hadn't advised you of that either before or in the meeting?

A. No.<sup>183</sup>

221. It was not put to Cardinal Pell that he knew about the previous sexual complaint against Baker at or prior to the PAB meeting in May 1992. Nor were

<sup>181</sup> Connors T 13968.30-46.

<sup>182</sup> CA Submissions at [922].

<sup>183</sup> Pell T 16401.30-46.



Bishop Connors' speculations as to what might have been in the mind of PAB members including Bishop Pell in May 1992 put to Cardinal Pell.

222. The high water mark of Bishop Connors' understanding as to what was in the minds of other people is contained in the following passages of evidence:

THE CHAIR: Q. I take it that the other members of this body present at this meeting [8 April 1992], or the Curia, they all would have known what you knew too, wouldn't they?

A. **I think** by now they would have, yes.<sup>184</sup>

223. And later in answer to a question asked in cross examination by Counsel Assisting:

A. **I would expect** that by this stage [6 May 1992] all the members [of the PAB] were aware of Father Baker's offence, the one offence at Gladstone Park ...<sup>185</sup>

224. Ordinarily, this type of evidence would be inadmissible in a court of law. Moreover, to borrow the language of Latham CJ, these answers are no more than suspicions, surmise or guesswork and play no part in the fact finding process.

225. The CA Submission does not make abundantly clear the finding recommended regarding the knowledge of the PAB and Curia in 1992 of a sexual complaint or complaints against Baker. The CA Submission submits that Bishop Connors' evidence and expectation, that other members of the PAB knew what he knew, should be accepted. However, there are also generalised submissions with respect to Baker such as:

- a. '[i]t is likely that there was general discussion about a priest's deficiencies ...'
- b. '[i]t is unlikely that there was not talk, gossip and discussion about [clergy abuse] among priests ... This talk would inevitably include those against whom allegations had been made, in particular where those allegations were believed to be true.'<sup>186</sup>

226. Reference is also made to the fact that Cardinal Pell had been a member of the Curia and PAB since 1987 and 'in those five years [between 1987 and 1992],

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<sup>184</sup> Connors T 13970.21-24.

<sup>185</sup> Connors T 13972.24-26.

<sup>186</sup> CA Submissions at [940]-[941].

Baker had been discussed at three PAB meetings and one Curia meeting at which he was present.<sup>187</sup>

227. Whilst it is not stated in precise terms, the implied suggestion in CA Submissions is that Cardinal Pell must have learned about one or more sexually related complaints made against Baker in the five year period leading up to the PAB meeting in May 1992. High-level submissions are made in CA Submissions that:

- a. the handling of Baker amounted to a 'complete failure by Archbishop Little *and his advisors*';<sup>188</sup> and
- b. '*... the Archdiocese through its senior members, Archbishop, Auxiliary Bishops, Vicar Generals, and the members of Curia and the PAB at relevant times, completely failed those members of the Archdiocese that had to deal with Baker*'.<sup>189</sup>

228. These ultimate submissions, in their generality, obviously have the potential to cause reputational damage to individuals who fall within the categories mentioned. It is submitted that to the extent findings are made they cannot be expressed in such a way as to reflect upon an individual without (a) identifying that individual; and (b) identifying with appropriate precision the evidence which founds the adverse finding.

229. There is no evidence with respect to Cardinal Pell and Baker to base any adverse finding for the following reasons:

- a. Cardinal Pell's evidence was that he did not know anything about sexual complaints made against Baker at or prior to May 1993;
- b. it was not put to Cardinal Pell that this evidence was incorrect;
- c. Counsel Assisting did not deal with any other matters with respect to Baker in cross examination of Cardinal Pell;
- d. the evidence of Bishop Connors with respect to various meetings of the PAB and Curia between 1987 and 1992 was that he could not recall the Archbishop raising the Gladstone Park complaint, he did not believe he himself raised the issue, and Baker's issues discussed by those meetings related to alcohol abuse; and

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<sup>187</sup> CA Submissions at [939].

<sup>188</sup> CA Submissions at [1013].

<sup>189</sup> CA Submissions at [1062].

- e. the fact that Bishop Pell did not hear about a 1978 sexual complaint about Baker during any meeting between 1987 and 1992 is entirely consistent with Bishop Connors and Bishop Deakin's evidence about the extraordinary strictures Archbishop Little placed on the flow of information about priests and child sexual abuse.

230. It is submitted that no adverse finding can be made with respect to Cardinal Pell and Baker.

## F. NAZARENO FASCIALE

231. CA Submissions make a submission that the PAB who met on 8 December 1993 accepted Fasciale's resignation in the knowledge of complaints against him, and thereby 'collectively they engaged in a cover up of Fasciale's conduct [and] misled parishioners and others by not revealing the true reason for his departure as a priest.'<sup>190</sup>

232. The evidence is that:

- a. By letter dated 6 December 1993, Fasciale tendered his resignation to the Archbishop citing ill-health as the reason.<sup>191</sup>
- b. On 8 December 1993, the PAB met. The meeting was informed of the letter of resignation citing ill-health and a motion was moved by Monsignor Murray and seconded by Father Mullally that the resignation be accepted.
- c. On 10 February 1994, the Vicar General wrote to Fasciale telling him that his faculties had been withdrawn and that he could not celebrate mass 'in circumstances which would lead anyone to conclude you have any current priestly appointment.'<sup>192</sup>
- d. Cardinal Pell could not recall whether he was aware of the complaints against Fasciale at the time of the PAB meeting,<sup>193</sup> saying that:
  - i. 'I can't say that I did [know]'.
    - ii. I couldn't be sure that I didn't, but I'm not quite sure when I heard about Fasciale's crimes.
    - iii. 'I can't remember [whether I was told by Monsignor Cudmore or Archbishop Little]. It is possible that they did.'
    - iv. 'I'm just not clear'.

233. CA Submissions elevate Cardinal Pell's absence of recollection as to this knowledge initially to 'does not deny' this knowledge,<sup>194</sup> and then uses that premise

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<sup>190</sup> CA Submissions at [1318].

<sup>191</sup> Fasciale Bundle, tab 39 (Exhibit 35-42).

<sup>192</sup> Fasciale Bundle, tab 42 (Exhibit 35-42).

<sup>193</sup> Pell T16406.3-40.

to ground actual knowledge in a collective cover up.<sup>195</sup> Plainly that does not stand up to scrutiny.

234. Counsel Assisting did not press Cardinal Pell on his knowledge in relation to Fasciale in 1993. It was not put to Cardinal Pell that he did, in fact, have knowledge. The evidence was adduced by Counsel Assisting as follows:

Q. So it is the case in relation to this meeting, you may or may not have been aware of the previous complaints when discussing whether or not Fasciale should be allowed to resign on the grounds of ill health?

A. That – that’s correct. Yes, I’m just not clear.<sup>196</sup>

235. CA Submissions assert that it is ‘inconceivable’ that all those present at the meeting were not aware of the reason for Fasciale being permitted to resign. It is unclear why the evidence drives one to such an inevitable conclusion exclusive of all other possibilities. It is entirely ‘conceivable’ that not everyone at the meeting knew about the Fasciale complaints.

236. In support of the recommended findings CA Submissions rely heavily on the evidence of Archbishop Hart and Bishop Connors. Archbishop Hart was not a member of the PAB at the time and his evidence as to the knowledge of what each member of the PAB might have known is little more than informed speculation. One must also be careful in paying too much attention to Archbishop Hart’s evidence as to how the PAB and Curia operated before his membership of those bodies, primarily because his experience is largely gained from how the Archdiocese functioned under Archbishop Pell, which was different to Archbishop Little to say the least.

237. The other witness CA Submissions relies heavily upon is Bishop Connors. Similarly, he was not present at this meeting. However, he was a member of the PAB at the time. Apart from his absence from the meeting, his evidence must be treated with caution for another reason. As is illustrated above with respect to Pickering and Baker, there are serious dangers in relying upon the evidence of someone like Bishop Connors who freely expressed views about what other people might have known when in reality he is not speaking from recollection of conversations or actual knowledge of what information was possessed by others, but rather surmise and guesswork. It is submitted that this type of speculation,

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<sup>194</sup> CA Submissions at [1316].

<sup>195</sup> CA Submissions at [1318].

<sup>196</sup> Pell T 16406.36-40.

particularly more than twenty years after the relevant event, is more a hindrance to the fact finder than it is of assistance. Moreover, there is perhaps a temptation for someone like Bishop Connors to assume that others had his level of knowledge. Given that he was the Vicar General for so many years, he would have known far more about child abuse allegations than other members of the PAB and the Curia. So much is borne out by the matters put to him in his own cross examination. In any event, in fairness to Bishop Connors, he checked his speculative answer that he would 'expect' information about Fasciale to have been shared amongst the members of the PAB with this qualification:

'I wasn't there and I can't remember really.'<sup>197</sup>

238. What Bishop Connors says about this is hardly probative evidence.

239. CA Submissions' recommended finding that the PAB engaged in a collective cover-up is a serious allegation. There is nowhere near the sort of proof which would be needed to satisfy such a serious allegation. The words of Dixon J bear repeating:

In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences.

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<sup>197</sup> CA Submissions at [1311].

## G. DESMOND GANNON

240. Cardinal Pell was asked very few questions about Father Desmond Gannon. Cardinal Pell accepted that he learned of the reasons for Gannon's resignation 'possibly around the time of that resignation – probably'.<sup>198</sup>

241. CA Submissions submit that there is no evidence of any Curia or PAB minutes which indicate Gannon's resignation was discussed prior to its receipt.<sup>199</sup> This may be so. Whilst there may not have been any discussion in terms of resignation, there was certainly a reference to the removal of his faculties, as referred to in CA Submissions.<sup>200</sup> The Curia Minutes of 23 July 1993 record as follows:

### 5. REV [BPB]

Bishop Mulkearns has advised the Archbishop that Father [BPB] is residing in Geelong. Father [BPB] has been advised that he does not have any faculties, nor may he exercise any priestly ministry. He may celebrate Mass privately in circumstances which could not lead anyone to conclude that he has any currently (sic) priestly appointment.

### 6. REV K O'DONNELL

The V.G. to advise in terms similar to those in item 5.

### 7. REV D GANNON

The V.G. to advise in terms similar to those in item 5.

242. The minute records, in effect, that the Vicar General will advise Gannon that he is to be stripped of his faculties, removed from ministry and may celebrate Mass privately **in circumstances which could not lead anyone to conclude that he has any current priestly appointment.** On this evidence, an attendee at the Curia meeting such as Bishop Pell would not have understood ill-health was being used as a pretext for his resignation. This is consistent with Cardinal Pell's evidence that he does not remember being consulted about Gannon being allowed to retire on the grounds of ill health.<sup>201</sup>

243. The removal of faculties in the terms of the Curia minute extracted above does not support a proposition that Pastor Emeritus was discussed.

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<sup>198</sup> Pell T.16402.33-35.

<sup>199</sup> CA Submissions at [1413].

<sup>200</sup> CA Submissions at [1428].

<sup>201</sup> Pell T 16402.47.

244. The next involvement of Bishop Pell was at the Curia Meeting on 2 September 1993, which records “D Gannon no longer PE”.<sup>202</sup>

245. CA Submissions recommend a finding against ‘senior members of the Archdiocese’ with respect to decisions made about Gannon.<sup>203</sup> There is no evidence that Cardinal Pell participated in any cover-up, or decision to appoint Gannon Pastor Emeritus, so it is submitted that any finding should avoid ambiguity as to who did, and who did not, participate in that cover up.

246. The remaining matters in Part 7 of CA Submissions do not relate to Cardinal Pell.

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<sup>202</sup> Gannon Bundle, tab 24 (Exhibit 35-44).

<sup>203</sup> CA Submissions at [1449].



## H. DAVID DANIEL

247. Cardinal Pell was briefly taken to the history of David Daniel and the only matter raised with him was the resignation on the grounds of ill-health. Cardinal Pell's evidence was that in considering this issue, he was more concerned with whether the claim of ill-health was true, which as a matter of fact, it was.<sup>204</sup> Cardinal Pell agreed that Daniel's resignation on the grounds of ill health was partly misleading.<sup>205</sup>

248. The minutes of the PAB meeting on 4 January 1995 record how the relevant event transpired:

### 8. HEALESVILLE

The Archbishop read to the meeting a letter from Fr. D Daniel ... informing him of his resignation due to ill-health. The letter was accompanied by a doctor's certificate which indicated that Fr. Daniel was medically unfit to continue in his present position. Fr. Daniel requested that the resignation be effective immediately. Fr. Daniel also requested to see the Archbishop as soon as possible. It was moved Bishop Deakin, seconded Mons. Murray that the resignation be accepted immediately. CARRIED

249. CA Submissions submit that '[Bishop] Pell knew of one or more complaints and did not object to [Daniel's] resignation on grounds of ill-health'.<sup>206</sup> And later:

'... these members of the PAB supported an arrangement that was intended to mislead the public as to the true reasons for Daniel's resignation and to cover up Daniel's conduct'.<sup>207</sup>

250. It is unclear precisely what is meant by the 'arrangement that was intended to mislead the public.' As the PAB minutes record, the Archbishop read out a letter which had been written to him and was not a letter to be released publicly. The letter was in evidence.<sup>208</sup> The PAB did not support the arrangement or endorse the letter. The resolution passed was limited to accepting the resignation. It is not open to draw inferences from the available evidence that in not objecting to the resignation, a member of the PAB somehow supported someone else's intentional deceit. There is

<sup>204</sup> Daniel Bundle, tab 23A (Exhibit 35-43); Pell T 16404.41-43.

<sup>205</sup> Pell T 16405.11.

<sup>206</sup> CA Submissions at [1534].

<sup>207</sup> CA Submissions at [1536].

<sup>208</sup> Daniel Bundle, tab 23 (Exhibit 35-43).

certainly no evidence sufficient to satisfy the Briginshaw standard of the finding recommended in CA Submissions.<sup>209</sup>

251. The remaining matters in Part 8 of CA Submissions do not substantively relate to Cardinal Pell and he was not taken to any of those matters.

#### **I. KEVIN O'DONNELL**

252. Cardinal Pell was not asked about any matters relating to Father O'Donnell in Case Study 35. No findings are sought by Counsel Assisting.

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<sup>209</sup> CA Submissions at [1536].

## CONCLUSION

253. In Part 10 of CA Submissions, certain findings are recommended with respect to the Archdiocese. CA Submissions traverse in a general way the particular knowledge of the Vicars General and Auxiliary Bishops and submit that high-level findings be made against various advisors or groups of the 'Archbishops advisors'. There is a substantial unfairness in taking a global approach to findings against the 'Archbishop's advisors'. This unfairness arises because:

- a. A finding about a group of persons has the potential to be attributed to each person who falls within the group;
- b. The Archbishop's advisors each had roles, responsibilities and a personal involvement which differed considerably;
- c. The period of time which the advisors held their respective positions was not identical; and
- d. According to the evidence, the advisors did not have the same levels of knowledge about issues the subject of investigation in this Case Study.

254. CA Submissions make a submission that:

To the extent that the Archbishop's advisors, being the members of the Curia, PAB and College of Consultors, and in particular the Auxiliary Bishops and Vicars General as senior priests in the Archdiocese, did not share their knowledge of complaints against priests and did not advise the Archbishop to act on them, they failed to exercise proper care for the children with whom these priests did, or would, come into contact.<sup>210</sup>

255. It is submitted that the reputation of an individual cannot be placed in jeopardy by smear. A reputational finding must be based on the actual knowledge of an individual as established by probative evidence of which the tribunal of fact is comfortably satisfied, and not the crude attribution of corporate knowledge to an individual. That is, in order to make a finding with respect to a group of persons, for example 'the Auxiliary Bishops', there must be proof about which the Royal

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<sup>210</sup> CA Submissions at [1725].

Commission is 'comfortably satisfied' with respect to **each and every member** of the group before such a finding can be made.

256. Set out elsewhere in this submission is the limited nature of the information Bishop Pell possessed with respect to relevant matters. It is submitted that no adverse finding could be made against Bishop Pell with respect to his time as an Auxiliary Bishop of the Archdiocese of Melbourne.

8 August 2016



**Sam Duggan**

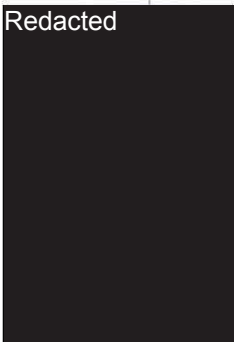
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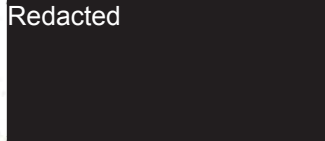
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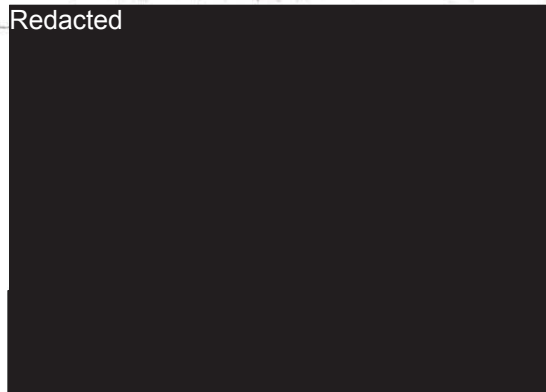
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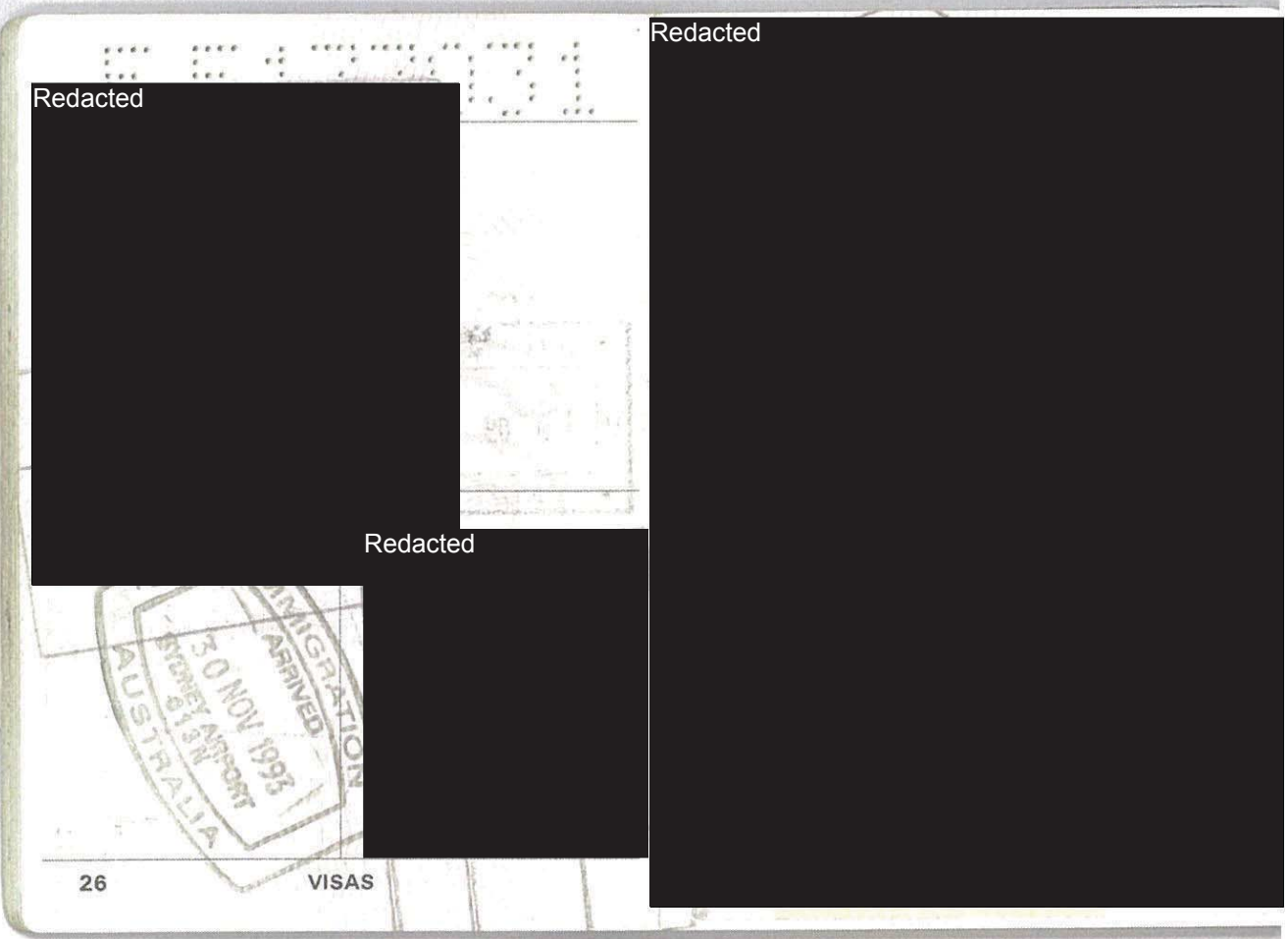


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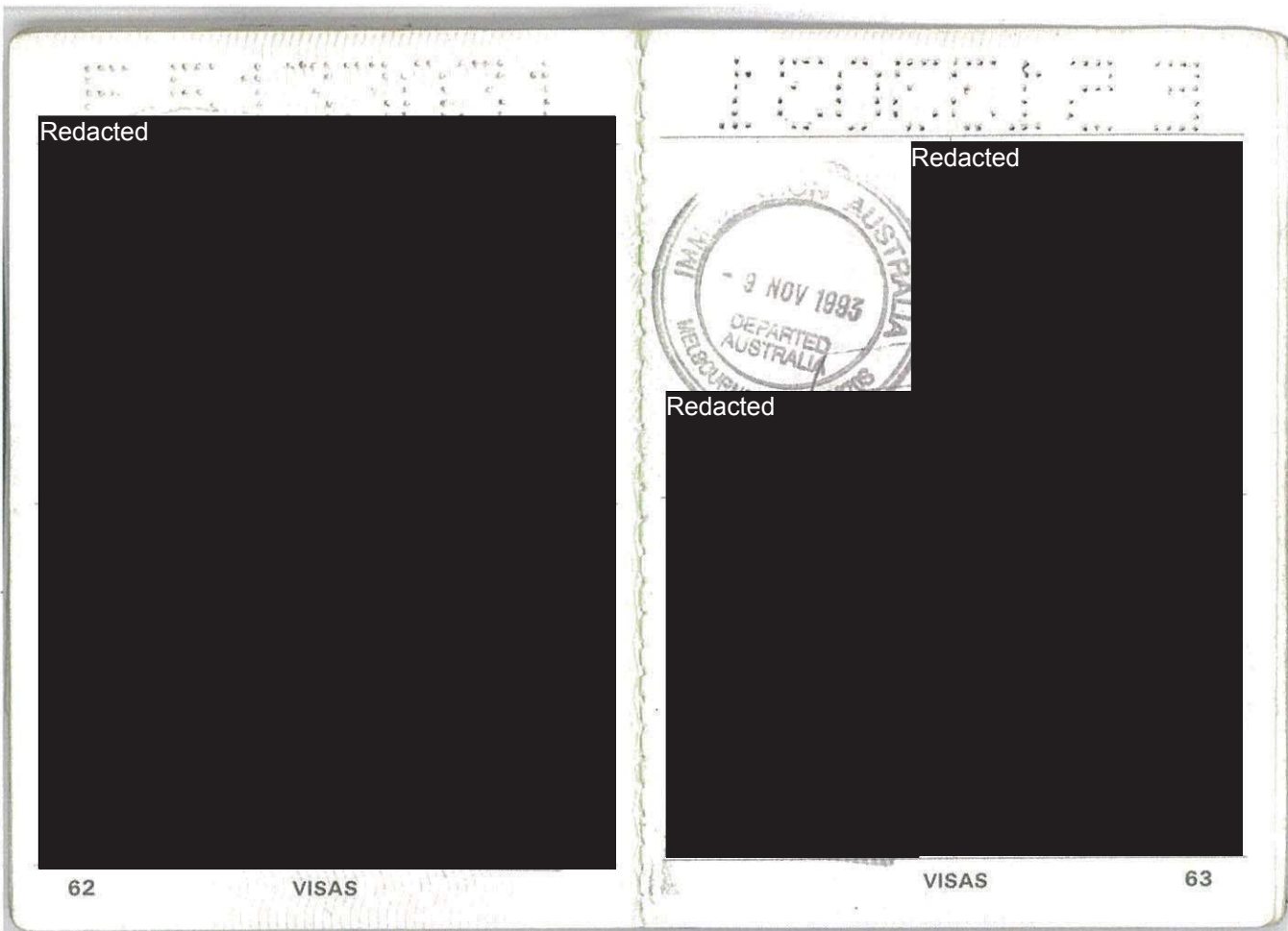
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