Royal Commission
into Institutional Responses
to Child Sexual Abuse

REPORT OF CASE STUDY NO. 14

The response of the Catholic Diocese of Wollongong to allegations of child sexual abuse, and related criminal proceedings, against John Gerard Nestor, a priest of the Diocese.

DECEMBER 2014

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The response of the Catholic Diocese of Wollongong to allegations of child sexual abuse, and related criminal proceedings, against John Gerard Nestor, a priest of the Diocese.

December 2014

CHAIR

The Hon. Justice Peter McClellan AM

COMMISSIONERS

Professor Helen Milroy
Mr Andrew Murray

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Preface

The Royal Commission

The Letters Patent provided to the Royal Commission into Institutional Responses to Child Sexual Abuse require that it 'inquire into institutional responses to allegations and incidents of child sexual abuse and related matters'.

In carrying out this task the Royal Commission is directed to focus its inquiries and recommendations on systemic issues but also recognise that its work will be informed by an understanding of individual cases. The Royal Commission must make findings and recommendations to better protect children against sexual abuse and alleviate the impact of abuse on children when it occurs.

A copy of the Letters Patent is at Appendix A to this report.

Public hearings

The Royal Commission is aware that sexual abuse of children has occurred in many institutions, all of which could be investigated in a public hearing. However, if the Royal Commission was to attempt that task a great many resources would need to be applied over an indeterminate, but lengthy, period of time. For this reason the Commissioners have accepted criteria by which Senior Counsel Assisting will identify appropriate matters for a public hearing and bring them forward as individual 'case studies'.

The decision to conduct a case study will be informed by whether or not the hearing will advance an understanding of systemic issues and provide an opportunity to learn from previous mistakes so that any findings and recommendations for future change that the Royal Commission makes will have a secure foundation. In some cases the relevance of the lessons to be learned will be confined to the institution the subject of the hearing; in other cases they will have relevance to many similar institutions in different parts of Australia.

Public hearings will also be held to assist in understanding the extent of abuse that may have occurred in particular institutions or types of institutions. This will enable the Royal Commission to understand the way that various institutions were managed and how they responded to allegations of child sexual abuse. Where our investigations identify a significant concentration of abuse in one institution it is likely that the matter will be brought forward to a public hearing.

Public hearings will also be held to tell the story of some individuals. This will assist in a public understanding of the nature of sexual abuse, the circumstances in which it may occur and, most importantly, the devastating impact that it can have on some people's lives. A detailed explanation of the rules and conduct of public hearings is available in the Practice Notes published on the Royal Commission's website at www.childabuseroyalcommission.gov.au. Public hearings are streamed live over the internet.

In reaching findings, the Royal Commission will apply the civil standard of proof that 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.

Private sessions

When the Royal Commission was appointed it was apparent to the Australian Government that many people (possibly thousands of people) would wish to tell the Royal Commission of their personal history of sexual abuse in an institutional setting when they were a child. As a consequence the Australian Parliament amended the *Royal Commissions Act 1902* (Cth) to create a process called a 'private session'.

A private session is conducted by one or two Commissioners and is an opportunity for a person to tell their story of abuse in a protected and supportive environment. As at 31 October 2014, the Royal Commission has held 2,579 private sessions and more than 1,439 people were waiting for one. Many accounts given in a private session will be reported in a de-identified form in later reports of the Royal Commission.

Research program

In addition to public hearings and private sessions the Royal Commission has an extensive research program. Apart from information gained in public hearings and private sessions, the research program will draw upon research undertaken by consultants to the Royal Commission together with the original work of its own staff. Significant issues will be considered in issues papers and discussed at roundtables.

This case study

This is the report of the public hearing that examined the response of the Catholic Diocese of Wollongong (the Diocese) in the Illawarra region of New South Wales to allegations of child sexual abuse, and related criminal proceedings, against John Gerard Nestor.

This case study concerned the Diocese's response to allegations of child sexual abuse made against Nestor, who was a priest of the Diocese. The case study examined the ways that the Diocese used Australian and canon law procedures (canon law refers to the laws of the Catholic Church) to prevent Nestor from exercising his priestly ministry and to ultimately have him dismissed from the priesthood.

The case study highlighted the difficulties and complexities of canon law.

The scope and purpose of the hearing was:

- the response of the Diocese to allegations of child sexual abuse, and related criminal proceedings, against John Gerard Nestor
- any other related matters.

Executive summary

This case study explored the ways that canon law procedures are used to prevent priests from exercising their priestly ministry and ultimately have them dismissed from the priesthood. It highlighted the complexity of those procedures.

It also illustrated significant changes in the response of the Holy See in Rome to child sexual abuse claims. During the period covered by the facts of this case study – 1996 to 2009 – there was confusion in both the Holy See and the wider Catholic Church about who has jurisdiction over allegations of child sexual abuse by clergy in the Curia of the Holy See.

In the early 1990s rumours started to spread and complaints were made about Nestor's conduct with boys. We heard evidence that in 1993 Bishop William Murray (deceased) asked Father Brian Lucas to interview Nestor. Father Lucas conducted this interview in his capacity as a member of the Catholic Church's NSW Special Issues Resource Group. Father Lucas told us that, in keeping with his usual practice, he did not take notes during or after this interview.

- **Finding 1:** When Father Brian Lucas interviewed a cleric or religious about allegations of child sexual abuse before a formal Church process had commenced against that person, Father Lucas should have made a contemporaneous record of the details of what was said in the interview.

- **Finding 2:** Failing to make and keep such a record had the consequence that:

    1. the interviewer and the cleric or religious may be unable to recall what was said in the interview and what conclusions were arrived at if they were subsequently called upon to do so
    2. written records that might otherwise have been available for use in a subsequent investigation, prosecution or other penal process are not available.

- **Finding 3:** An outcome of Father Lucas' practice of not taking notes of interviews, such as his interview with Nestor, was to ensure that there was no written record of any admissions of criminal conduct in order to protect the priest or religious concerned and the Church, which for the priest may have included criminal proceedings.

In April 1996, a complaint was made against Nestor that led to criminal proceedings against him. Nestor was convicted and he appealed his conviction.

We heard evidence that, while the criminal proceedings were progressing, the Diocese became aware of further complaints against Nestor.

- **Finding 4:** The further complaints about Nestor that Bishop Philip Wilson received in the period after Nestor was charged to shortly after Nestor's appeal against his conviction justified serious reservations and concern about the danger that Nestor posed to children and his suitability for ministry.

Nestor successfully appealed his criminal conviction. Despite Nestor's acquittal, the Diocese had concerns about Nestor's suitability for ministry and commenced a formal Towards Healing assessment process to assess Nestor's suitability for a future appointment.

We heard evidence that, during this assessment process, the Bishop of Wollongong made a personal request and later a formal decree that Nestor not exercise public ministry. Nestor disobeyed his bishop and performed mass on more than one occasion.

- **Finding 5:** Bishop Wilson's request to Nestor to remain on administrative leave after his acquittal, and his decrees of 7 August 1998, were justified acts to protect children from possible sexual abuse by Nestor as a cleric.

While Nestor was on administrative leave he was invited to celebrate mass publicly by Father Patrick Vaughan at St Thomas More Church in Ruse, a suburb in the Diocese. Later, while subject to the decrees of 7 August 1998, Nestor was invited to celebrate mass publicly by Father Mark O'Keefe in the Parish of Unanderra.

- **Finding 6:** Father Patrick Vaughan's and Father Mark O'Keefe's invitations to Nestor to celebrate mass publicly undermined Bishop Wilson's efforts to protect children from possible sexual abuse by Nestor as a cleric.

Nestor successfully sought recourse to the Congregation for the Clergy (CFC) in the Holy See regarding the actions of his bishop. We heard evidence that the CFC tends to favour the clergy in such circumstances and that the Bishop of Wollongong was not surprised to learn that the CFC made a decision in Nestor's favour.

The Diocese appealed the decision of the CFC to the Supreme Tribunal of the Apostolic Signatura (the Apostolic Signatura) in Rome – the highest judicial authority in the Church other than the Pope – and after nearly 5½ years the Apostolic Signatura made a decision in favour of the Diocese. During this time, Nestor left Australia and attempted to exercise his priestly ministry in foreign dioceses.

- **Finding 7:** The length of time that the appeal to the Supreme Tribunal of the Apostolic Signatura took, which was from February 2001 to May 2006:

    1. had an adverse impact in the Diocese of Wollongong and contributed to uncertainty about Nestor's status
    2. resulted in Nestor being abroad for many years, where he undertook some public ministry and was a potential risk to children.

The Diocese was notified that the allegations against Nestor were reportable to the New South Wales Ombudsman, so the Diocese conducted an independent investigation under the *Ombudsman Act 1974* (NSW). This investigation resulted in three out of the four allegations against Nestor being sustained.

After the investigation under the Ombudsman Act, the Diocese commenced a preliminary investigation under canon law and made a submission to the Congregation for the Doctrine of the Faith (CDF) in the Holy See. Ultimately, Pope Benedict XVI dismissed Nestor from the priesthood in October 2008.

- **Finding 8:** Once the Diocese's case regarding Nestor, dated 10 September 2008, was received:
  1. the Congregation for the Doctrine of the Faith acted in a timely manner by deciding to dispense with the requirement for a penal judicial process and requesting that the Pope dismiss Nestor from the clerical state *ex officio et in poenam* on 26 September 2008
  2. Pope Benedict XVI acted in a timely manner by issuing a decree dismissing Nestor from the clerical state on 17 October 2008.
- **Finding 9:** Bishop Peter Ingham should have made it known publicly that Nestor had been dismissed from the clerical state because of the findings of child sexual abuse and other inappropriate conduct made against him.

1 John Gerard Nestor

1.1 Background on Nestor and sexual abuse complaints

John Gerard Nestor was ordained as a priest in the Catholic Diocese of Wollongong (the Diocese) on 11 November 1989 by the then Bishop of Wollongong, Bishop William Murray (deceased). Nestor was appointed assistant priest at St Francis Xavier's Cathedral Parish, Wollongong. On 30 June 1990, Nestor was transferred as an assistant priest to St John the Evangelist Parish in Dapto, a suburb of Wollongong.

From about the late 1980s[1] Nestor organised camps for children in the Diocese.[2] The camps were run several times a year[3] and newsletters or flyers were circulated in local parishes to advertise the camps.[4] Some camps were run for altar boys and ex-altar boys; others were open to all children in the local parishes.[5] The camps for boys and girls were run separately.[6]

1.2 Nestor's conviction and later acquittal on child sexual abuse charges

In the early 1990s rumours started to spread and complaints were made about Nestor's conduct with boys. In late April 1996, an allegation of child sexual abuse was made against Nestor. In December 1996, he was convicted in the Wollongong Local Court of aggravated indecent assault and an aggravated act of indecency on a person under the age of 16 years. In October 1997, he was acquitted on appeal to the District Court of New South Wales. During and after the criminal proceedings, the Diocese became aware of other complaints against Nestor.

1.3 The Church's investigation of complaints and Nestor's dismissal from the priesthood

Over the next 11 years the Church considered the question of whether Nestor should be allowed to function publicly as a priest and whether he should be dismissed from the priesthood (laicised). Steps taken to deal with Nestor included:

- an assessment under Towards Healing
- recourse to the CFC
- an appeal to the Apostolic Signatura
- an independent investigation under the Ombudsman Act
- a preliminary investigation under canon law
- a submission to the CDF.

Ultimately, Pope Benedict XVI dismissed Nestor from priesthood in October 2008.

1.4 Effectiveness of the Church's procedures for dealing with misconduct by priests

This case study shows that canon law procedures for preventing priests from exercising their priestly ministry and ultimately having them dismissed from the priesthood are very complex. Ultimately, the decision to dismiss a Catholic priest rests with the Pope.

Nestor was eventually acquitted on criminal charges, but those charges gave rise to concerns about Nestor's suitability to work with children. These concerns were later confirmed by investigative proceedings under the child protection legislation.

This case study illustrates:

- the significant changes in the Holy See's response to child sexual abuse claims over the period
- the confusion that existed at the time in both the Holy See and the wider Catholic Church about where in the Curia of the Holy See jurisdiction over allegations of child sexual abuse by clergy lay.

2 Early rumours and complaints

In the early 1990s, Father Graham Schmitzer, the Chancellor and Private Secretary to Bishop Murray, heard rumours that, at the camps Nestor ran, boys were skinny dipping and showering in the open and that Nestor had conversations with boys about the size of genitalia.[7]

About this time Father Schmitzer also knew[8] that some priests in other parishes had decided not to advertise the camps in their parishes because they had also heard rumours about Nestor's conduct at these camps.[9] Father Schmitzer told Bishop Murray about these rumours and that other priests had decided not to advertise the camps.[10]

Several other complaints had been made against Nestor:[11]

- a school principal reported his concern about the camps to the NSW Catholic Director of Schools for the Diocese in 1991[12]
- the same principal reported his concerns to the Catholic Education Office in Wollongong and the Diocese in 1993[13]
- after a conversation with some boys, the Secondary Religious Education Consultant for the Catholic Education Office reported to the Catholic Director of Schools concerns he had about a camp organised by Nestor in 1993[14]
- an assistant on the camps and a parent ('ABQ') separately reported their concerns about the camps to Centacare Wollongong in 1993.

Centacare is the Catholic Church's community services agency. The Director of Centacare Wollongong passed ABQ's complaints on to Bishop Murray and to the New South Wales Department of Community Services (DoCS). DoCS interviewed ABQ's son 'ABP' and four brothers who had also been on the camps ('ABR', 'ABS', 'ABT' and 'ABU'). DoCS closed each file after the interview.[15]

2.1 Father Lucas and the 1992 Protocol

1988: Church establishes Special Issues Committee to study child sexual abuse by priests

In the 1980s Father Lucas, a trained lawyer and ordained Catholic priest, became involved in the response of the Catholic Church in Australia to the emerging issue of child sexual abuse committed by Church personnel.[16]

In 1988 Father Lucas made a recommendation to the Australian Catholic Bishops Conference (ACBC) (the national body of bishops in Australia) that a national committee be established to study the issue and develop appropriate procedures.[17] The ACBC accepted this recommendation and the ACBC Special Issues Committee (originally named the Special Issues Sub-Committee) was established.[18]

Father Lucas explained that the insurer of the Catholic Church in Australia (Catholic Church Insurances Limited) used the description 'special issues' to refer to public liability claims for child molestation, adult boundary violation and the like.

The Special Issues Committee later became the Professional Standards Committee.[19] The Special Issues Resource Group later became the Professional Standards Office (PSO).[20]

1992: Special Issues Committee develops protocol to deal with criminal behaviour

In 1992 the Special Issues Committee developed the *1992 Special Issues Sub-Committee of the Australian Catholic Bishops Conference Protocol for Dealing with Allegations of Criminal Behaviour* (1992 Protocol).[21] The 1992 Protocol was adopted by the ACBC in April 1992.[22]

The 1992 Protocol stated that its operation 'is limited to allegations of criminal behavior made against a cleric or religious' and set out a process of investigation of such allegations.

The 1992 Protocol established a Special Issues Resource Group for each Church province in Australia.[23] The 1992 Protocol provided that whenever a competent ecclesiastical authority, such as a bishop, received information of alleged criminal behaviour the matter was to be referred to the relevant Special Issues Resource Group. Special Issues Resource Groups were to provide advice, conduct investigations, assist with investigations and manage contact with media.[24]

The 1992 Protocol applied to the Diocese from the early 1990s until March 1997. Bishops in Australia were expected to follow the 1992 Protocol if an accusation of criminal behaviour was made against a cleric or religious. In dealing with allegations of criminal behavior bishops were obliged to take into account and preserve various values. Bishops were to:[25]

- act with justice, mercy and charity
- respect the civil law and not obstruct or pervert the course of justice
- show pastoral solicitude for the welfare of the complainant, victim, victim's family and/or accused
- not call into question the good reputation of any person, whether complainant, victim or accused, and their right to privacy
- act so as to prevent or remedy scandal.

As a member of the Special Issues Committee, Father Lucas was involved in both the development of the 1992 Protocol and, later, the Towards Healing protocol, which commenced in 1997.[26]

1993: Nestor is interviewed by Father Lucas

Father Lucas gave evidence that Bishop Murray asked him to interview Nestor in about 1993[27] in his capacity as a member of the Special Issues Resource Group.[28] At the time of this interview, the allegations against Nestor were composed of rumours, complaints and unease about his conduct at camps. No victim had come forward. Allegations of criminal behaviour had not been made and were not made until April 1996.

Father Lucas said that the interview was informal. It was effectively a preliminary step to any formal investigation under the 1992 Protocol.[29]

Father Lucas said that he was not given written or detailed notes about the allegations made against Nestor before he interviewed him.[30] Father Lucas did not make his own note of the allegations he was to put to Nestor.[31]

It is commonly accepted that making file notes at significant meetings is good administrative practice so that there is a contemporaneous record of what happened if an issue arises about what happened or who said what later on.

However, in accordance with his general practice, Father Lucas did not record the interview or take any notes.[32] Father Lucas explained that he adopted this approach in order to:

- maintain the assurance of confidentiality he had given to the cleric
- help the cleric being interviewed talk openly and frankly about his conduct
- where relevant, help the cleric to reveal his offences.[33]

Father Lucas said that, given that he had told the cleric that what he said would be confidential and that no records of the interview would be made, the cleric's right to silence would be undermined if he recorded or subsequently disclosed what was said in the interview.[34]

Counsel Assisting and Father Lucas had the following exchange:

> Q. Father Lucas, I have reconsidered the answers that you gave before lunch, and I want to suggest that the most rational explanation to the practice of yours that you spoke of was to ensure that there was no written record of any admissions of criminal conduct in order to protect the priests and the church. Is that not right?
>
> A. That would be an outcome, but the context of the conversation was either there be no conversation at all, and the opportunity perhaps for someone to move on and resign would be lost. In terms of taking a written record, I have explained the position: in speaking to a priest in these circumstances, it was my view that he would not be forthcoming if notes were taken, and I considered it to be unfair to take a note afterwards that he didn't have the opportunity to adhere to.[35]

Thus, Father Lucas accepted that an outcome of his practice of not taking notes of interviews, such as his interview with Nestor, was to ensure that was no written record of any admissions of criminal conduct in order to protect the priest or religious concerned and the Church.[36]

It follows from Father Lucas's evidence that there were occasions when the conduct of the priest or religious that he had the conversation with may have warranted their moving on and resigning.

The importance of having a record of the conversation in these circumstances is obvious. As Father Lucas accepted, the absence of a written record protected the priest or religious concerned and the Church from the consequences of disclosure, which may have included criminal proceedings.

Father Lucas said that in the interview he put to Nestor the substance of the rumours about Nestor's conduct at the camps. He wanted to see if he could get any agreement or explanation from Nestor about the conduct[37] and the inappropriateness of it.[38] Nestor denied the allegations but said something to the effect that he was 'helping [the children at the camps] in the formation of their conscience'.[39]

Father Lucas did not tell Bishop Murray the details of what Nestor told him. He told Bishop Murray the end result – that Nestor denied the allegations – and that he felt a general discomfort about Nestor's denial.[40]

- **Finding 1**

When Father Brian Lucas interviewed a cleric or religious about allegations of child sexual abuse before a formal Church process had commenced against that person, Father Lucas should have made a contemporaneous record of the details of what was said in the interview.

- **Finding 2**

Failing to make and keep such a record had the consequence that:

1. the interviewer and the cleric or religious may be unable to recall what was said in the interview and what conclusions were arrived at if they were subsequently called upon to do so
2. written records that might otherwise have been available for use in a subsequent investigation, prosecution or other penal process are not available.

- **Finding 3**

An outcome of Father Lucas' practice of not taking notes of interviews, such as his interview with Nestor, was to ensure that there was no written record of any admissions of criminal conduct in order to protect the priest or religious concerned and the Church, which for the priest may have included criminal proceedings.

2.2 Bishop Murray refuses permission to organise further camp

On 17 May 1994 Father Schmitzer submitted a Special Issues Incident Form to the Diocese's insurer, Catholic Church Insurances Limited, about Nestor's conduct at the camps.[41] The form stated that:

> For some years Fr Nestor, Assistant Priest at Dapto, has organised Youth and Altar Servers Camps during school holidays. Some time ago 'The Illawarra Mercury' contacted Miss Kath McCormack, Director of Wollongong CENTACARE, regarding allegations the Mercury had received concerning misconduct by Fr Nestor on these camps. This Chancery Office knows nothing of details regarding victims or dates. The Bishop feels that nothing of a criminal nature happened …[42]

Shortly afterward, on 25 May 1994, Bishop Murray refused Nestor permission to organise another camp.[43] Bishop Murray told Nestor:

> In view of the present 'witch hunting' mentality of our local media, I think it would be advisable to forego this proposal for this occasion.[44]

2.3 Nestor travels overseas to study

1994: Nestor leaves Australia to study overseas

In 1994, Nestor went to the United States to study theology.[45] Counsel Assisting put the proposition to Father Schmitzer that Nestor was sent overseas to 'get him out of the way or allow the dust to settle'. Father Schmitzer gave evidence that he would not have been surprised if that were true. However, he said that he did not know and could not remember whether Nestor asked to be sent to the United States or whether Bishop Murray volunteered him.[46]

Father Schmitzer accepted that he had not seen correspondence between Nestor and Bishop Murray about Nestor studying overseas.[47] There is some evidence that Bishop Murray initially refused Nestor's request to study overseas but that Nestor had sent Bishop Murray a letter stating why he should reconsider this decision; Bishop Murray had then granted Nestor's request and gave him permission to attend a two-year course at the Family campus of the John Paul II Institute for Studies on Marriage and the Family in Washington in the United States.[48]

1996: Nestor returns to Australia

In 1996, Nestor returned to Australia and was appointed assistant priest in the Parish of Kiama in New South Wales. Around 19 April 1996, he moved to the Parish of Fairy Meadow, New South Wales, of his own accord.[49]

Bishop Murray retired on 12 April 1996. Upon his retirement, Father Paul Ryan was appointed Administrator of the Diocese until Monsignor Wilson was ordained and installed as Bishop on 10 July 1996.[50]

Archbishop Wilson gave evidence that the administrator of a diocese is restricted from making major decisions within the diocese but can do what is required for the ordinary administration of the diocese.[51]

In about April 1996, when Nestor was in Fairy Meadow, the then Catholic Director of Education in the Diocese, Mr Terry White, told Father Ryan as Administrator of the Diocese that he did not want Nestor to have any dealings with children at St John Vianney's School at Fairy Meadow because of rumours he had heard about Nestor's conduct with boys. In response to this, Father Ryan directed that Nestor not have any involvement or contact with this school.

3 Criminal proceedings

3.1 ABA's complaint about Nestor

In late April 1996, shortly after Father Ryan directed Nestor not to have any involvement or contact with St John Vianney's School, Father Schmitzer was told about a complaint against Nestor by 'ABA'.[52]

Father Schmitzer spoke to ABA and his father in person the next day and ABA told Father Schmitzer that Nestor had sexually abused him.[53] The abuse occurred in 1991 when ABA was 15 years old.[54] Father Schmitzer gave evidence that, when he asked ABA whether he wished to go to the police, ABA said he would prefer not to.

Father Schmitzer arranged for him to meet the following day with the director of Centacare in Wollongong, Ms Kath McCormack.[55] After this meeting with Kath McCormack ABA agreed to report the abuse to the police. Father Schmitzer helped him to do this.[56]

On 29 April 1996, Father Schmitzer told Father Ryan, who was at that time still acting as Administrator of the Diocese, about ABA's complaint.[57] Father Ryan immediately sought advice from Father Lucas and the Bishop-Elect, Monsignor Wilson, on what he should do. Both advised Father Ryan to stand Nestor down from public ministry until the complaints made against him were resolved.[58] The next day, after receiving this advice, Father Ryan instructed Nestor personally and in writing to stand aside from the exercise of any public ministry.[59]

Shortly after this, Nestor was arrested and charged.[60] Nestor remained on administrative leave during the police investigation and criminal proceedings that followed.

3.2 Nestor's requests for secular employment

On 10 June 1996, before Nestor was convicted of the charges against him, he requested permission from Father Ryan to undertake employment outside the Church – in particular, with the University of Western Sydney.[61] On 13 June 1996, Father Ryan refused this request because, as the Administrator of the Diocese until Bishop-Elect Wilson commenced, he considered that he was not able to grant permission to Nestor.[62]

On 30 July 1996, Bishop Wilson refused Nestor's request to undertake secular employment because he considered that this would be inconsistent with Nestor being on administrative leave.[63]

3.3 Nestor's conviction for assaulting ABA

Before the allegations of sexual assault, Nestor and ABA's family had had a 'fairly close friendship'.[64] On the day of the assault, which occurred between June and September 1991, ABA and his brother, 'ABB', were staying overnight at Nestor's home.[65] ABA alleged that

during the night he was woken up by Nestor touching him. Nestor proceeded to thrust his penis at ABA's bottom and then tried to pull his pyjamas down. Nestor took hold of ABA's hand and put it on Nestor's penis. ABA pulled his hand away. Nestor then put his hand inside ABA's pyjama pants and played with ABA's penis.[66]

On 20 December 1996, Magistrate Johnson of the Wollongong Local Court found Nestor guilty of aggravated indecent assault and an aggravated act of indecency on ABA, who was under the age of 16 years.[67]

In the criminal trial it was not disputed that the brothers and Nestor watched a video from mattresses on the floor before going to sleep on the mattresses. Relevantly, Magistrate Johnson observed that Nestor:

> did not deny that the boys had stayed overnight at his home on a number of occasions, that they had slept in the way that the boys have said on mattresses on a bedroom floor, watching a video, particularly on this night, the night in question.[68]

In February 1997, Nestor was sentenced to terms of 12 months and four months, to be served consecutively.[69]

Archbishop Wilson said that Nestor's guilt or otherwise on charges of sexually assaulting ABA was a matter for the law, but Nestor's admission about the sleeping arrangements was a matter of concern for him.[70] Archbishop Wilson said that these sleeping arrangements with teenage children were highly inappropriate.[71] This conduct raised questions about Nestor's suitability for ministry of any kind.[72] Archbishop Wilson said that this admission stayed with him throughout his dealings with the Nestor case.[73]

Nestor appealed the decision of Magistrate Johnson to the District Court of New South Wales and was granted bail pending the appeal. In the period of the appeal, Father Ryan's instruction that Nestor stand down from public ministry still applied.[74]

3.4 Further complaints about Nestor

In the period of Nestor's appeal, during 1997 and shortly after, Bishop Wilson was informed of four further complaints against Nestor.

ABD's complaint

On 24 July 1997, Bishop Wilson received a letter from Mr John Davoren of the PSO about a complaint that 'ABE' made about misconduct by Nestor and another priest towards her son, 'ABD'.[75]

ABD alleged that Nestor had told a joke about 'priests and Christmas trees having balls' and about 'personal development'. ABD said he also saw Nestor's penis when Nestor, ABD and another boy were seeing 'who could do the biggest wee'.[76]

ABI's complaint

In September 1997, Bishop Wilson was informed about a complaint that a parent, 'ABJ', had made against Nestor.[77] Bishop Wilson referred ABJ to the PSO. Mr Hugh Hynd, an assessor appointed by the PSO, conducted an assessment.[78]

Mr Hynd reported that he expected that the complaint 'would have stemmed from some incident involving interference of some sort with [ABI]'.[79] ABJ's son 'ABI' alleged that, at camps organised by Nestor, Nestor had insisted on communal naked showering and bathing and had showered naked with the boys. ABI also said that Nestor had insisted that ABI's brother, 'ABK', shower naked and ABK did not want to.[80]

Archbishop Wilson gave evidence that in a letter dated 7 October 1997, forwarded to him by Mr Davoren on 13 October 1997, Mr Hynd concluded that he thought it not 'appropriate for [Nestor] to be employed in any situation which might permit him singular access to young children'.[81]

ABN's complaint

Also in September 1997, Bishop Wilson was told of a complaint that 'ABN' made against Nestor.[82] ABN alleged that, at camps organised by Nestor, Nestor had insisted on communal naked showering and bathing and had conducted 'soap inspections' after the boys had washed. ABN also said that he had seen Nestor touch his brother 'ABO' 'on the penis and the bum' during one of the camps.[83] This complaint was referred to the PSO.[84]

ABL's complaint

On or about 31 October 1997, Ms Margaret Chittick of Centacare informed Bishop Wilson of a complaint that 'ABM' made against Nestor.[85] ABM's son, 'ABL', had told her that, at a camp that Nestor had organised, Nestor initiated a competition to find the 'hairiest arse' and the 'biggest dick' amongst the boys.[86] Nestor started this competition after he had been swimming nude with the boys.[87] On 18 December 1997, Bishop Wilson visited ABM and her son ABL to discuss the complaint.[88] The matter was referred to Towards Healing assessors.[89]

> **Finding 4**
>
> The further complaints about Nestor that Bishop Philip Wilson received in the period after Nestor was charged to shortly after Nestor's appeal against his conviction justified serious reservations and concern about the danger that Nestor posed to children and his suitability for ministry.

3.5 Nestor's acquittal

On 22 October 1997, Phelan DCJ acquitted Nestor after conducting a fresh trial.[90] Phelan DCJ was not persuaded that the Crown had established ABA's allegations beyond a

reasonable doubt.[91] His Honour found a number of problems with the reliability of ABA's evidence, including:

- the timing of events
- inconsistencies in evidence
- evidence that ABA had seen ghosts.

Phelan DCJ said that, while he did not wish to belittle ABA, 'it does seem to remain a possibility that reality and imagination in his mind, may at times merge'.[92]

However, Phelan DCJ also commented that:

> There were two other aspects of the evidence that deserve comment – they relate to the appellant sleeping on the same mattresses as the two boys. This, the Crown submits, was imprudent. *There is merit in this submission*. But inappropriate conduct does not prove that a criminal offence took place. *The dictates of prudence should have been clear to the appellant in his priestly position* …[93] [Emphasis added.]

Archbishop Wilson gave evidence that these comments, as well as Nestor's admission that he had slept on the same mattresses as ABA and his brother, confirmed his view that Nestor's conduct was unacceptable.[94] Archbishop Wilson explained that he had formed the view that there was a real question about whether, as a matter of conscience, he could allow Nestor to return to ministry even though he had been acquitted.[95]

4 Disciplinary action taken by the Diocese

4.1 Towards Healing assessment

About Towards Healing

In January 2010 the ACBC and the Australian Conference of Leaders of Religious Institutes published *Towards Healing: Principles and procedures in responding to complaints of abuse against personnel of the Catholic Church in Australia*[96] (Towards Healing). The document contains a set of principles, protocols and procedures that the Church must follow in the case of a person who complains that they have been, relevantly, sexually abused by a priest, religious or other Catholic Church personnel in Australia. It commenced in March 1997 and was amended in December 2000.[97] There have been further subsequent amendments to Towards Healing that are not relevant to this case study.

Towards Healing identifies the principles that must form the basis of the Church's response in Australia to a complaint of sexual abuse. It also outlines the procedures to be followed in particular cases, such as the investigation and handling of complaints of sexual abuse.[98]

1997: Bishop Wilson begins Nestor's assessment under Towards Healing

After Nestor was acquitted, Bishop Wilson decided that a formal Towards Healing assessment should commence to determine whether Nestor would be suitable for any future appointment.[99]

On 7 November 1997, Bishop Wilson issued a media statement stating that an assessment process would soon begin and Nestor would remain on administrative leave until that process was complete.[100]

On 8 January 1998, Bishop Wilson appointed Ms Elizabeth Hannan and Mr Howard Murray as assessors to be responsible for the assessment process, as required by Towards Healing.[101] Archbishop Wilson gave evidence that Ms Hannan and Mr Murray were recommended by the PSO.[102] Archbishop Wilson could not recall why there was a delay in appointing the assessors.[103]

Both Bishop Wilson's letter to Nestor informing him of the assessment process[104] and his appointment letters to the assessors[105] state that the assessment procedure would fulfil, in part, the function of a 'preliminary investigation' under canon 1717 of the 1983 Code of Canon Law.[106] It was contemplated that the Towards Healing and canon law processes would run together.

The 1983 Code of Canon Law is the primary source of the 'laws' of the Catholic Church. It was promulgated on 25 January 1983 by Pope John Paul II.[107] It came into force on 27 November 1983.[108] The official text of the 1983 Code of Canon Law is in Latin. The 1983 Code of Canon Law is commonly identified as CIC83.

Canon 1718 of the CIC83 requires 'sufficient evidence' before penal proceedings can commence against a priest. This law applied to any proceedings to dismiss Nestor from the clerical state.[109] For this reason Archbishop Wilson said that he wanted to make sure that the results of the Towards Healing assessment could be used to show that there was 'sufficient evidence' of a case against Nestor. Archbishop Wilson gave evidence that he believed that evidence obtained from an investigation conducted using the civil standard of proof (as the assessment process was) satisfied this requirement.[110]

It was contemplated that the Towards Healing assessment and canon law process would run together.[111]

1997: Bishop Wilson makes personal request that Nestor not engage in public ministry

On 15 November 1997, Bishop Wilson met with Nestor and asked him to stand aside from public ministry 'voluntarily' without issuing a formal order or decree. Archbishop Wilson gave evidence that, under canon law, issuing orders and decrees were a last resort.[112] Nestor initially agreed to stand aside voluntarily.[113]

At the same meeting Nestor requested an *exeat* from the Diocese so that he could work as a priest in another diocese.[114] Archbishop Wilson explained that, as Nestor was incardinated into the Diocese, meaning he was 'hinged', in effect, to that diocese.[115] Nestor needed Bishop Wilson's permission before he could move to another diocese.[116]

Archbishop Wilson explained that, if he allowed Nestor to change diocese, the management or otherwise of the Nestor matter would become someone else's problem. Archbishop Wilson accepted that for some that approach could be a 'big temptation'. However, he gave evidence that he believed it would be 'unbelievable and unthinkable' to take that course in light of his responsibility as a bishop to his own diocese, the universal church and the protection of children.[117]

Bishop Wilson therefore refused Nestor's request.[118]

1998: Nestor breaks agreement; Bishop Wilson makes decree that Nestor not engage in public ministry

On 22 January 1998, Bishop Wilson discovered that on 18 January 1998 Nestor had broken his agreement to stand aside from public ministry by celebrating mass and preaching the homily at St Thomas More Church, Ruse.[119] Bishop Wilson gave Nestor a formal decree under canon 273 of the CIC83.[120] The decree said that:

> [Nestor was] to cease functioning publicly as a priest in any place until I give you permission to do so. … any disregard for the instructions of this decree will cause me to initiate the process to suspend you formally from the sacred ministry.[121]

Nestor believed this decree was void. He told Bishop Wilson that he would continue to exercise public ministry 'until lawfully requested otherwise'.[122]

On 22 January 1998 Bishop Wilson wrote to Father Vaughan, the parish priest at St Thomas More Church, asking him not to allow Nestor to celebrate mass publicly at his parish again.[123]

1998: Nestor disobeys Bishop Wilson's decree

On 27 January 1998, Bishop Wilson was informed that Nestor had again celebrated mass at St Thomas More Church on 25 January 1998.[124] At that time, Father Vaughan had not read Bishop Wilson's letter.[125] However, after reading the letter, Father Vaughan did not invite Nestor to celebrate mass publicly at his parish again.[126]

After Nestor celebrated mass a second time at St Thomas More Church, Bishop Wilson wrote to Nestor requesting that he comply with his decree of 22 January 1998.[127]

On 29 March 1998, Father Vaughan contacted Bishop Wilson to let him know of his intention to invite Nestor to concelebrate mass (that is, to celebrate mass together) with him on Holy Thursday in his parish.[128] Bishop Wilson urged Father Vaughan not to do this.[129] Father Vaughan complied with this request.[130]

Father Vaughan gave evidence that on reflection, and with a better understanding of child sexual abuse, he now understands that it may be necessary for the Church to conduct its own investigations into allegations of child sexual abuse to determine whether a person poses a risk to children even if that person has been acquitted of criminal conduct.[131] Father Vaughan said he realises that, by inviting Nestor to celebrate mass at his parish, he did not adequately consider the feelings of ABA and his family.[132]

Father Vaughan also said that if he were in the same position again, knowing what he now knows about child sexual abuse, he does not think he would invite Nestor to say any mass without the permission of Bishop Wilson.[133]

1998: Bishop Wilson seeks canon law and pastoral advice on Towards Healing procedure

Although Bishop Wilson had decided that Nestor should be assessed under Towards Healing before being allowed to undertake public ministry, he sought advice to make sure that his approach was canonically and pastorally defensible against any challenge that Nestor might make.[134] He sought advice from several sources, including the CDF, the CFC and specialists in canon law.

'Canon law' refers to laws of the Church. It is not 'law' as understood in Australian civil and criminal law; it is enforceable only as a private agreement between members of the Church.[135] The Church refers to the laws enacted by secular authorities as 'civil law'.

In addition to the CIC83, other canon law instruments applied to the Diocese and Nestor:

- the 1962 *Instructio de modo procedendi in causis sollicitationis* (the 1962 Instruction), also known as *Crimen sollicitationis*[136]

- the 2001 *Motu proprio: Sacramentorum sanctitatis tutela* (the 2001 SST), which promulgated the Norms of more grave delicts reserved to the CDF.[137] 'Grave delicts' include the sexual assault of a minor under the age of 18 years by a cleric. [138]

All bishops of the Church were required to observe the 1962 Instruction where an accusation of criminal behaviour had been made against a cleric or religious in relation to the sacrament of confession. However, Title Five of the 1962 Instruction extends the protocol to sexual assault against, or attempted against, pre-adolescent children.[139] The 1962 Instruction gave jurisdiction over this conduct to the Sacred Congregation of the Holy Office (now the CDF).

The 1962 Instruction was not widely available. Archbishop Wilson gave evidence that in his experience nobody in the Church knew about it.[140] This might be explained in part because, until recently, the 1962 Instruction was not a public document – it was to be kept 'carefully in the secret archive of the curia for internal use'; it was only disclosed to bishops and superiors of clerical religious institutes.[141]

Archbishop Wilson explained that at the time he sought advice there was great confusion among canon lawyers about the proper procedures to follow in these sorts of cases. Some canon lawyers argued that special instructions (such as the 1962 Instruction) that were in place before the CIC83 was promulgated no longer applied. [142]

Specialist advice

On 27 January 1998, Bishop Wilson contacted Dr James Provost, Head of Canon Law at the Catholic University of America, for advice on the approach that should be taken under canon law.[143] Dr Provost replied that, among other things, Bishop Wilson's procedure (including issuing the 22 January 1998 decree and commencing an assessment process under Towards Healing) was correct and in keeping with canon law and good pastoral practice.[144]

Advice from the Congregation for the Doctrine of the Faith

On 28 January 1998 Bishop Wilson wrote to Cardinal Joseph Ratzinger, then the Prefect of the CDF, to ask what procedures applied under canon law to the Nestor matter and, particularly, whether the procedures in the 1962 Instruction applied.[145]

Bishop Wilson sought this advice because there was confusion in the Church about whether the procedure set out in the 1962 Instruction applied in cases of alleged sexual assault against a minor.[146] The CDF responded on 28 February 1998 confirming that the 1962 Instruction applied to the Nestor matter.[147]

Advice from the Congregation for the Clergy

On 10 March 1998, Bishop Wilson wrote to Cardinal Castrillon Hoyos, then the Prefect of the CFC, requesting guidance in dealing with the Nestor case.[148] He followed this up on 23 June 1998 because he had not yet heard back from the CFC.[149]

Bishop Wilson sought this advice because he wanted to make sure that the way he was going to proceed was correct. Also, in his experience, the CFC saw themselves as the main congregation for these sorts of cases. This reflected, in part, the lack of certainty at the time over which congregation had jurisdiction over cases of alleged sexual assault against a minor.[150]

On 15 July 1998, the CFC eventually replied by referring Bishop Wilson to the provisions of the CIC83 and warning that refuge could not be sought in 'particular norms' in conflict with the code, which Bishop Wilson understood to be a reference to Towards Healing.[151] Bishop Wilson also understood from this reply that the CFC was asserting its jurisdiction in the area of sexual assault against minors.[152]

Other advice

On 25 June 1998, Father Bob McGuckin, the then Vicar General of Parramatta in New South Wales, advised Bishop Wilson that, when a priest seeks recourse from an administrative decree (that is, when they seek to have the administrative decree set aside), the decree is not suspended as it would be if the decree were penal in nature.[153] This was relevant for Bishop Wilson to know in case Nestor sought recourse against Bishop Wilson's decree, which Nestor later did.

1998: Bishop Wilson receives further complaints and updates from assessors

During the period when Bishop Wilson's decree dated 22 January 1998 was in force, three more complaints were made against Nestor.

On 10 February 1998, Mr Murray told Bishop Wilson about another complaint against Nestor, although it later became clear that the complainant did not want to participate in the assessment process.[154] On 12 April 1998, Mr Murray informed Bishop Wilson about the second and third complaints. One was from 'ABH' about inappropriate comments and touching of a sexual nature.[155] Another was from Ms Janet Morrisey, a former teacher at a school where Nestor had taught, about inappropriate comments he had made to boys while he was teaching.[156]

Throughout the assessment period, Mr Murray and Ms Hannan kept Bishop Wilson up to date with the progress of the assessment process.[157]

1998: Towards Healing assessment report and recommendations

On 16 May 1998, Ms Hannan and Mr Murray gave Bishop Wilson their assessment report.[158]

In the methodology section of the report, Ms Hannan and Mr Murray advised that they had used the civil standard of proof for the assessment – proof based 'on the balance of probabilities'.[159] The report contained Ms Hannan's and Mr Murray's findings about which of the complaints against Nestor could be sustained.[160] The report included a recommendation that:

> Before Fr Nestor be allowed to engage in any public ministry, he be subjected to an appraisal as to his fitness to do so such as that offered through the Church's Encompass program.[161]

Encompass Australasia was the Church's sexual counselling program. Trained psychologists and psychiatrists ran many of the programs.[162]

Ms Hannan and Mr Murray did not interview Nestor before completing their report. They stated in their report that Nestor was given the opportunity to be interviewed but that, after consultation with his legal advisor, he did not take this up. Ms Hannan and Mr Murray considered that it was agreed between them and Nestor's legal advisor that an interview would be of 'no good purpose' given that Nestor denied all the allegations made against him.[163]

After Bishop Wilson received the report, he sought advice on it from the New South Wales Professional Standards Resource Group (PSRG) – an advisory body on the administration of Towards Healing.[164] The PSRG advised Bishop Wilson that:

1. in light of the available evidence of Nestor's continuing and seriously imprudent and ambiguous behaviour, significantly at variance with any reasonable understanding of the obligations of his role, there were serious grounds for concern about his suitability for pastoral ministry,
2. consequently that the Bishop is left with little choice but to demand reassurance from Fr Nestor that he is a fit and proper person suitable to be reappointed, and where the Bishop could be confident in making such a reappointment that he was not thereby placing at risk any member of the community that he wished Fr Nestor to serve …[165]

The PSRG therefore recommended that, to obtain that reassurance, Nestor should be asked to undergo a full appraisal by Encompass Australasia before being allowed to take any further appointment.[166]

4.2 Bishop Wilson issues two 7 August 1998 decrees

After receiving the PSRG's advice, Bishop Wilson issued two decrees to Nestor on 7 August 1998 stating, relevantly, that Nestor was:

- required to undergo a full appraisal by Encompass Australasia as a prerequisite to any further ecclesiastical appointment (first 7 August 1998 decree)[167]
- 'restricted from celebrating the liturgy publicly'. This restriction applied 'to all places within and without the Diocese' and would continue until it was abrogated by a decree of the diocesan Bishop of Wollongong (second 7 August 1998 decree).[168]

Liturgy is the worship life of the Church.[169] The reference in the second 7 August 1998 decree to 'celebrating the liturgy publicly' is to all of the rites, ceremonies, prayers and sacraments of the Church.[170]

Archbishop Wilson gave evidence that he had authority under canon 381 of the CIC83[171] to issue the 7 August 1998 decrees because he had immediate and proper power for the administration of the Diocese, particularly for the life of the clergy.[172]

Archbishop Wilson said that he considered that the second 7 August 1998 decree was required to make sure that priests in the Diocese would not let Nestor exercise public ministry.[173] When issuing these decrees, Bishop Wilson considered they were administrative in nature, not penal.[174]

Nestor refused to submit to an assessment by Encompass Australasia.[175]

> **Finding 5**
>
> Bishop Wilson's request to Nestor to remain on administrative leave after his acquittal, and his decrees of 7 August 1998, were justified acts to protect children from possible sexual abuse by Nestor as a cleric.

Enforcing the second 7 August 1998 decree

In September 1998, Nestor breached the second 7 August 1998 decree by publicly celebrating mass in the Parish of Unanderra in New South Wales.[176]

When this was brought to Bishop Wilson's attention, he wrote to both the parish priest of Unanderra, Father O'Keefe, and Nestor advising them that this was in breach of Bishop Wilson's decree and that it should not happen again.[177] Bishop Wilson also asked Father O'Keefe to read a pastoral letter at the upcoming weekend masses explaining that Nestor was not allowed to exercise public ministry and that his celebration of mass in the Parish of Unanderra was against Bishop Wilson's instructions.[178] Bishop Wilson followed up this request in a discussion with Father O'Keefe on 18 September 1998 and again in a letter on 7 October 1998.[179]

The 7 August 1998 decrees were issued to Nestor. It is uncertain whether the steps taken by Bishop Wilson to notify parish priests within the Diocese about the second 7 August 1998 decree were effective given Father O'Keefe's evidence that in September 1998 he was not aware of the second 7 August 1998 decree.[180]

Archbishop Wilson gave evidence that he sought legal advice about his media statement of 7 November 1997 and that he did not think he could do more.[181]

Father O'Keefe was aware of Bishop Wilson's media statement dated 7 November 1997 advising that Nestor would remain on administrative leave until an assessment under Towards Healing was complete.[182] Father O'Keefe accepted that nothing had changed since that media release to lead him to believe that Nestor could now celebrate mass.[183]

Father O'Keefe did not read the pastoral letter out at the weekend masses as requested, although he did bring the letter to the attention of those present.[184] In accordance with Bishop Wilson's instructions, Father O'Keefe did not permit Nestor to celebrate mass at his parish again.[185]

Before Father O'Keefe allowed Nestor to celebrate mass publicly at his parish and after Nestor had been acquitted of criminal charges, Father O'Keefe had written a letter to Bishop Wilson in support of Nestor. Father O'Keefe, amongst other things, commented that:

> While I would understand your hesitation to restore John to a parish appointment, at least for the present, I must admit to being greatly surprised that you have not, as yet, restored John's faculties to celebrate or concelebrate public Masses. While I can understand a need for a period of assessment in terms of John's parish ministry, I must admit to bewilderment that he has to continue in this unfortunate state of ministerial limbo. After the painfully slow process of demonstrating his innocence, John now awaits the justice of being welcomed back by the clergy and people of the diocese.[186]

Father O'Keefe accepted that his support for Nestor in this letter was motivated by a belief that in part Bishop Wilson's treatment of Nestor had been unjust because after his acquittal there was still no resolution.[187] Father O'Keefe also placed weight on the acquittal being a positive thing for the Church and for Nestor.[188]

Around February 2001, Father O'Keefe wrote a letter to the *Illawarra Mercury* newspaper, which, together with a sermon he had given earlier, expressed support for Nestor and criticism of Bishop Wilson.[189] Father O'Keefe gave evidence that he did these things because he felt at the time that Nestor's recourse to the CFC, discussed below, had decided the issue and humiliated Bishop Wilson.[190]

Father O'Keefe gave evidence that he now understands that, even though a person does not receive a criminal conviction, that person may not be appropriate to exercise public ministry having regard to the risk of child sexual abuse.[191] Father O'Keefe also gave evidence that he was not aware of all relevant information that Bishop Wilson had about Nestor – for example, the further complaints that were made about Nestor after his acquittal.

He explained that, had he known this information, he probably would not have written the letters and given the homilies that he did about the Nestor matter,[192] nor would he have arranged for Nestor to say mass at his parish.[193] Father O'Keefe conceded that Bishop Wilson had a right to appeal to the Apostolic Signatura (see section 7 below).[194]

Finding 6

Father Patrick Vaughan's and Father Mark O'Keefe's invitations to Nestor to celebrate mass publicly undermined Bishop Wilson's efforts to protect children from possible sexual abuse by Nestor as a cleric.

5 Nestor's recourse to the Congregation for the Clergy

5.1 Nestor's application to the Congregation for the Clergy

On 4 October 1998, Nestor applied to the CFC to have at least Bishop Wilson's first 7 August 1998 decree set aside.[195] This is known in canon law as 'seeking recourse'. It was not clear whether Nestor intended to challenge the second decree in his recourse to the CFC because he did not specifically mention it.[196] However, the CFC's decision in effect overturned the second decree.[197]

Nestor informed Bishop Wilson of his recourse to the CFC,[198] but neither Nestor nor the CFC gave Bishop Wilson any detailed information on the case against Bishop Wilson.[199]

On 12 December 1998, the CFC requested that Bishop Wilson send it 'any input' that Bishop Wilson had about the matter.[200] He sent that input on 31 March 1999.[201] His input consisted of a brief summary of the Nestor case, including the processes that he had undertaken. Bishop Wilson advised that, by his 7 August 1998 decrees, he had sought to engage in an administrative and not a penal process. However, he did not mention that CDF had advised him that the 1962 Instruction applied and that the CDF had exclusive jurisdiction in the matter.[202] Archbishop Wilson gave evidence that he mentioned to the Secretary of the CFC, Archbishop Scaba Ternyak, that the CDF had jurisdiction.[203]

Archbishop Wilson gave evidence that he understood that the CFC tended to support priests because the CFC is responsible for the care of the clergy. He explained that, at that time, especially in the United States, when bishops were trying to deal with cases involving sexual abuse the CFC would make 'things difficult for them' and would tend to support the priests, giving instructions to the bishops that the priests be allowed back into ministry.[204] Bishop Wilson was not surprised to learn, informally, from Archbishop Scaba Ternyak that the CFC decision was likely to be made in Nestor's favour.[205]

Negotiation processes

During the CFC process, the CFC 'strongly urged' Bishop Wilson to seek a pastoral resolution of the matter with Nestor.[206] Bishop Wilson attempted this, but he was unsuccessful. He gave evidence that Nestor made it a precondition to any discussions that the 7 August 1988 decrees be withdrawn. There was ultimately a short meeting between Bishop Wilson and Nestor in which they agreed that they could not reach a pastoral resolution and that the CFC should be informed of this.[207]

The approach of the CFC can be explained by the preference in canon law for pastoral resolutions over formal decrees or penalties.[208]

On 30 November 2000, Bishop Wilson was appointed Coadjutor Archbishop of Adelaide in South Australia.[209] After this appointment he acted as the Administrator of the Diocese until he began ministry in Adelaide in February 2001.[210]

5.2 The decree of the Congregation for the Clergy

On 21 December 2000, more than two years after the date of Nestor's application for recourse, the CFC decreed that Nestor's recourse to it was upheld.[211] The CFC decreed:

> Rev. Nestor is to be restored immediately to the full exercise of his priestly ministry in the Diocese of Woolongong [sic] …[212]

The CFC held that the Towards Healing assessment and Bishop Wilson's subsequent decree had failed to comply with the proper canon law processes.[213] The CFC found that Bishop Wilson's decree was penal (not administrative) in nature.[214] Penal decrees can only be enacted after a 'preliminary investigation' in accordance with canons 1717–1719 of the CIC83 and after starting a penal process under canon 1720 of the CIC83.

Canon 1717 of the CIC83 governs how a preliminary investigation of a crime[215] under canon law is to be carried out and by whom. Canon 1718 of the CIC83 governs what is to be done once sufficient evidence from this preliminary investigation has been collected.[216]

The CFC ruled that the Towards Healing assessment process had not complied with the procedural requirements for a preliminary investigation under canon law because:[217]

- Bishop Wilson did not appoint a single delegate to act on his behalf, as envisaged by canon 1717§1 of the CIC83
- there was no indication that the purposes of a 'preliminary investigation' outlined in canon 1718 of the CIC83 were clearly arrived at
- the Acts of the case (that is, the formal record of the investigation) did not include a decree of the closure of the 'preliminary investigation', as envisaged by canon 1719 of the CIC83
- there was no evidence that the investigative materials were kept in the secret archive of the Diocese, as required under canons 1719 and 489§1 of the CIC83
- there was no written, sworn testimony from the complainants and the complaints were not verified by recognisable legal means
- Nestor requested, and was not afforded, the opportunity of a canonical process to prove his innocence.

The CFC considered that the standard of proof adopted by the Towards Healing assessors was not consistent with a preliminary investigation under canon 1717 of the CIC83[218] – in particular, that the standards of 'balance of probabilities' and 'unacceptable risk' were foreign to canon law.[219]

Consequences of the decree of the Congregation for the Clergy

The CFC decree placed Bishop Wilson and his successors, Father Bryan Jones and Bishop Ingham, in a difficult position: it required Nestor to be restored immediately to the full

exercise of his priestly ministry, yet the substantial doubts about Nestor's suitability for ministry remained.

Archbishop Wilson and Bishop Ingham gave evidence that, despite the CFC decree, they felt bound by conscience not to permit Nestor to engage in public ministry.[220]

Before the CFC decision on Nestor's recourse, Bishop Wilson had sought advice about what he might do if the decision from the CFC was against him. Bishop Wilson sought this advice from Father Thomas Brundage, Bishop Geoffrey Robinson and law firm Makinson d'Apice.[221]

Bishop Wilson also sent the CFC decree to Cardinal Edward Clancy, the Archbishop of Sydney; and Archbishop Francis Carroll, the Archbishop of Canberra and Goulburn and the Chair of the ACBC.[222] On 15 January 2001, the ACBC sent Bishop Wilson a letter recognising that the CFC decree has implications for dioceses across Australia and that:

> Clearly it is not easy to offer any advice as it is difficult to know how to proceed. If conscience and perhaps civil law are in conflict with the decree, you deserve the support of your brother bishops.[223]

6 Advice on the Commission for Children and Young People Act

On 4 January 2001, Father Peter A Comensoli (the Chancellor of the Diocese) sought advice from lawyers Makinson d'Apice on the Diocese's obligations under the *Commission for Children and Young People Act 1998* (NSW) (CCYP Act) – in particular, whether the CCYP Act required the Diocese to ask Nestor to consent to a Working With Children Check under Part 7 of that Act.[224]

The CCYP Act established and provided for the functions of a commission (the Commission for Children and Young People (CCYP)) to improve the safety, welfare and wellbeing of all children and young people in New South Wales. The legislation came into force on 3 July 2000 along with the *Children Protection (Prohibited Employment) Act 1998* (NSW). Under the CCYP Act, all employees working with children had to undergo a Working with Children Check. The CCYP Act also prohibited certain people from working with children.

In a letter dated 16 January 2011, Makinson d'Apice advised that the CCYP Act applied and that the Diocese had a duty to carry out relevant screening procedures under the CCYP Act before employing Nestor to undertake any form of public ministry.[225]

On 15 March 2001, the Commissioner of the CCYP wrote to Father Jones, who was Administrator of the Diocese after Bishop Wilson left for Adelaide in February 2001. The Commissioner said that, based on the information in the media, it appeared that the Church's actions against Nestor would constitute a relevant completed disciplinary proceeding. Accordingly, the Diocese would be required to notify the CCYP.[226] Father Jones said he received this letter on 20 March 2001.[227]

On 3 April 2001, Father Jones sought Professor Patrick Parkinson's advice about whether the Diocese needed to notify the CCYP about Nestor.[228] Professor Parkinson told him that, as no disciplinary processes or action had been undertaken, the Diocese was not required to notify the CCYP about Nestor.[229]

7 Bishop Wilson appeals to the Apostolic Signatura

7.1 Petition to the Congregation for the Clergy to reconsider and revoke its decree

Bishop Wilson decided that it was necessary to appeal the CFC decree. The appeal needed to be made to the Apostolic Signatura.[230] Before Bishop Wilson could do this, he was required under canon law to request the CFC to review their decree.[231]

On 12 January 2001, before departing for Adelaide, Bishop Wilson sent a letter petitioning the CFC to revoke or amend the decree on 'procedural and pastoral grounds'.[232] The grounds were that Nestor's appeal was outside the allowable time limits and that the decree could cause further scandal[233] in the Diocese.[234]

On 19 May 2001, four months after Bishop Wilson petitioned the CFC to revoke or amend its decree, the CFC rejected Bishop Wilson's petition.[235]

7.2 Application to the Apostolic Signatura

On 22 February 2001, once the 30-day period for the CFC to reconsider its decree had expired,[236] Father Jones commenced an appeal from the decision of the CFC to the Apostolic Signatura.[237] Father Jones raised the following matters in support of the appeal:[238]

- Nestor's recourse to the CFC was made outside the relevant time limits
- the allegations against Nestor came within the scope of the exclusive jurisdiction of the CDF as reserved to it by the 1962 Instruction and therefore the CFC lacked jurisdiction to decide Nestor's recourse to it
- Bishop Wilson was never given a copy of Nestor's application to the CFC or a summary of the facts of the case.

Father Jones released a media statement about this appeal on 23 February 2001.[239]

The ACBC supported the appeal to the Apostolic Signatura. Archbishop Carroll, President of the ACBC, sent a letter to the Prefect of the Apostolic Signatura, Cardinal Mario Francesco Pompedda, stating that, in matters affecting the safety and wellbeing of minors, the Bishop of Wollongong 'must not be placed in a situation where the State is ordering him to do one thing while the Church is ordering him to do the opposite'.[240]

The ACBC sent this letter after Father Jones requested Archbishop Carroll's advice.[241] The letter referred to truths that the Australian bishops had learnt '[t]hrough bitter experience' – in particular, that:

> the offence [of sexual abuse of minors] cannot be reduced to a sexual sin for which the sacrament of confession is an adequate remedy …[242]

Further, the letter stated that the ACBC was 'perturbed by the statement in the decree of the [CFC] that that criterion of "unacceptable risk" is foreign to canon law and cannot be taken into consideration'.[243] The ACBC said:

> Australian law has the concept of 'unacceptable risk', meaning that a person cannot be appointed to an office if this appointment carries with it an unacceptable risk of abuse of minors. … If the idea of unacceptable risk is 'foreign to canon law', then should the idea be rejected or should the law be changed?[244]

The ACBC said that the CFC decree has created 'a dilemma in law, in conscience and in Church–State relations'.[245]

Suspension of the decree of the Congregation for the Clergy

When Father Jones appealed to the Apostolic Signatura, he was unsure what effect this appeal had on the status of the CFC decree – in particular, whether it was still in force. To clarify this position, Father Jones asked Cardinal Pompedda whether the appeal to the Apostolic Signatura would suspend the decree of the CFC.[246]

In a letter dated 28 June 2001, the Apostolic Signatura replied that the appeal to the Apostolic Signatura did not suspend the CFC's decree but that an application could be made to the Apostolic Signatura for a suspension.[247]

Father Jones made an application for suspension of the CFC decree on 24 July 2001.[248] Both Nestor and the CFC opposed the application.[249]

The Apostolic Signatura granted the application in part on 22 April 2002.[250] It suspended the part of the CFC decree requiring Nestor to be restored immediately to the full exercise of his priestly ministry in the Diocese. It did not suspend the part of the decree requiring that Nestor be remunerated in accordance with the Diocesan norms.[251]

Until the Apostolic Signatura issued the suspension, there was no formal restriction on Nestor's ability to minister as from the date of the CFC decree: 21 December 2000.[252]

On 25 July 2001, Bishop Ingham was installed as the Bishop of Wollongong.[253] Bishop Ingham continued the process of appeal to the Apostolic Signatura with the assistance of his Chancellor, Father Comensoli.

Materials in support of the application to the Apostolic Signatura

On 26 July 2001, Bishop Ingham appointed Ms Martha Wegan, a canon lawyer in Rome, to act as his Procurator-Advocate in the appeal to the Apostolic Signatura.[254] In this role Ms Wegan submitted a formal 'Memoriale' on behalf of the Diocese to the Apostolic Signatura on 27 March 2002 and on 24 May 2004.[255] Grounds for the appeal in the Memoriale included that the CFC:[256]

- erred in characterising the decree as a penal measure[257]
- erred in concluding that standards of proof less than beyond reasonable doubt (including 'unacceptable risk') were alien to canon law[258]

- was not competent to make its decree given that jurisdiction over matters concerning sexual assault of a minor is reserved to the CDF, in accordance with 1962 Instruction.[259]

On 5 November 2003, the Apostolic Signatura notified Bishop Ingham that the CFC had submitted its Memoriale and that the case was now with the Promoter of Justice of the Apostolic Signatura[260] to make submissions.[261]

The Promoter of Justice is meant to make sure that the correct procedure is followed; he or she is able to make judgments about the proper nature of everything that has taken place.[262] On 20 January 2004, the Promoter of Justice provided his submissions to the Apostolic Signatura.[263] Ms Wegan advised Father Comensoli on 10 November 2005 that these submissions were in the Diocese's favour.[264]

On 18 March 2004, the Apostolic Signatura decreed that the Nestor matter would be dealt with by the Apostolic Signatura.[265]

Delay

The appeal to the Apostolic Signatura took nearly 5½ years. The Diocese made the appeal on 22 February 2001 and the Apostolic Signatura decision was not issued until 18 March 2006.

During this period Bishop Ingham sent three letters to the Apostolic Signatura asking when judgment might be expected or inquiring about the reasons for the delay in receiving judgment.[266] In the last letter, sent on 17 May 2005, Bishop Ingham noted that the lengthy delay was having an 'adverse impact on our diocese and the priest involved'.[267]

7.3 The Apostolic Signatura's decision

On 18 March 2006, the Apostolic Signatura upheld the Diocese's appeal.[268] This was communicated by letter dated 30 March 2006. The letter was received in the Diocese on 10 April 2006.[269]

On 20 July 2006, the Apostolic Signatura issued its reasons in its Definitive Sentence (the Apostolic Signatura decision).[270] The Apostolic Signatura found that, first, the CFC was not competent to hear the matter and, secondly, it had erred in holding that Bishop Wilson's decree was penal in nature.[271]

In support of the finding that the CFC was not competent to hear the matter, the Apostolic Signatura referred to relevant provisions of the Apostolic Constitution and the General Ordering of the Roman Curia.[272] It noted that, after the CFC decree, the CDF's 'exclusive competence' in the matter had been confirmed by the 2001 SST. This finding clarified any confusion that had previously existed about whether the CDF was the competent congregation for cases involving alleged sexual assault against minors.[273]

The Apostolic Signatura held that Bishop Wilson's decree was not a penalty but, rather, a 'non-penal disciplinary decision'. The Bishop was entitled to make this decision on the basis

of a 'positive and probable doubt' about Nestor's suitability for ministry. The Apostolic Signatura noted that:

> However, the decision by which, eg, the conferring of an ecclesiastical office by a competent authority is impugned because of the lack of suitability of the candidate or the faculty either to preach or to hear confessions is revoked, respectively with canons 764[274] and 974§1,[275] is in no way the inflicting of a penalty, for which is required moral certainty concerning a gravely imputable crime committed, but a non-penal disciplinary decision, which may be imposed because of a positive and probable doubt concerning the suitability of the cleric in the matter concerned.[276]

This is significant, because it clarifies:

- that a decree restricting a priest's use of his faculties is not necessarily penal
- that the penal standard of proof will not apply to this decision – rather, the standard is whether there is a positive and probable doubt about the suitability of the cleric in question.

However, the Apostolic Signatura stated that it was not up to it to decide on whether the Towards Healing assessment procedure conformed with 'universal law' (understood to be a reference to canon law) and that, if this was warranted, it would be a matter for the Pontifical Council for Legislative Texts.[277]

The Apostolic Signatura also suggested that the procedure that Bishop Wilson adopted under Towards Healing was not a 'preliminary investigation' to a penal procedure that was in accordance with canon 1717 of the CIC83:

> even though he had spoken of having set up a preliminary investigation to a penal procedure *in accordance with canon 1717, in fact he had used another form of procedure* …[278] [Emphasis added.]

Finding 7

The length of time that the appeal to the Supreme Tribunal of the Apostolic Signatura took, which was from February 2001 to May 2006:

1. had an adverse impact in the Diocese of Wollongong and contributed to uncertainty about Nestor's status
2. resulted in Nestor being abroad for many years, where he undertook some public ministry and was a potential risk to children.

8 Nestor's employment outside the Diocese of Wollongong

In early 2001, Nestor moved to the United States without permission[279] from Bishop Wilson.[280] He remained overseas for the next five years until about March 2006.[281]

On several occasions Nestor sought permission to exercise his priestly faculties in dioceses in the United States and in various countries in Africa. Each time that the bishop of the relevant diocese or Nestor wrote to Father Jones or Bishop Ingham to ask whether Nestor had or could have his leave to do so, Father Jones and Bishop Ingham refused.[282] They adopted the view that, until Nestor's position in the Diocese had been resolved, it was not appropriate to allow him to minister publicly elsewhere.[283]

As explained above, a cleric is incardinated to a particular diocese – he cannot simply change diocese.[284] If a cleric wants to move to another diocese, he needs the permission of his bishop.[285] A cleric may be granted permission to move to another diocese for a specified period and this permission can be renewed several times.[286] If the cleric is granted permission to permanently change diocese, the rights and duties of the cleric are determined by written agreement with the bishop of the place he wishes to move to.[287] A bishop cannot incardinate a cleric unless he knows by a lawful document that excardination[288] has been granted and has also obtained, under secrecy if need be, appropriate testimonials about the cleric's life, behaviour and studies.[289]

These obligations under canon law explain why Nestor sought permission to exercise his faculties in other dioceses and why the bishops in foreign dioceses asked Father Jones or Bishop Ingham whether Nestor had or could have leave to use his faculties in another diocese.

It appears that Nestor may have undertaken public ministry on some occasions while he was overseas. Bishop Ingham gave evidence that he recalled in 2002 being aware that Nestor may have been exercising his priesthood as part of a university chaplaincy.[290] He wrote to Nestor on 21 May 2002 asking whether this was the case.[291] Nestor replied on 24 June 2002 stating that Father John Myers, Bishop of Peoria in the United States, had given him 'faculties for his diocese' and had asked him to live at the University of Illinois.[292] However, Father Jones had previously written to Bishop Myers on 21 June 2001 stating that Nestor was not able to undertake public ministry.[293] On 6 July 2001 Bishop Myers replied, noting, with reference to Towards Healing, that he would not want to do anything adverse to the pastoral intentions of the bishops.[294] This suggests that Bishop Myers may not have given Nestor 'faculties' as Nestor claimed.

There is also some evidence that Nestor had celebrated public mass at an aged care facility in the Parish of Clemton Park in the Archdiocese of Sydney upon his return to Australia in 2006. The parish priest was subsequently informed that Nestor was not able to undertake public ministry.[295]

There is a suggestion that Nestor may have undertaken secular work, possibly as a bus driver. In a letter to Cardinal Castrillon Hoyos, Nestor asserted that Bishop Wilson had given him permission to work as a bus driver.[296] Archbishop Wilson had not previously seen this letter. He gave evidence that he did not recall Nestor telling him that he had obtained an authority to drive buses and that he never gave Nestor permission to drive buses.[297] It is unclear whether Nestor did in fact work as a bus driver.[298]

9 Investigation under the Ombudsman Act

9.1 Catholic Commission for Employment Relations advice on Ombudsman Act investigation

From May 1999 the Diocese was required by Part 3A of the *Ombudsman Act 1974* (NSW) to report allegations or convictions of child sexual abuse to the Ombudsman's office.[299] There was also an obligation on employers to inform the NSW CCYP about disciplinary actions against employees that have been completed.[300]

The Catholic Commission for Employment Relations (CCER) – a body that gives advice and, in some matters, has authority to act in employment matters concerning those employed within the Church[301] – advised the Diocese on 18 March 2004 that, while Nestor was overseas, the Diocese had no obligations under the Ombudsman Act. The CCER advised that these obligations were only enlivened on Nestor's return to Australia.[302] (The Executive Director of the CCER was the 'head of agency' for the purposes of the Ombudsman Act from 2000;[303] the Bishop became the head of agency from 1 July 2005.[304])

9.2 Nestor's return to Australia

As stated above, Nestor lived overseas during the period from early 2001 to early 2006. Nestor's return to Australia in about March 2006 prompted Father Comensoli to write to the Principal Investigator at the New South Wales Ombudsman's office on 25 July 2006 to seek clarification and direction about what steps the Diocese was to take on the allegations against Nestor.[305]

Sister Moya Hanlen, who replaced Father Comensoli as Chancellor on 1 August 2006, followed this up. On 15 September 2006, Sister Hanlen wrote to the Ombudsman's office referring to Father Comensoli's letter dated 25 July 2006. She had a conversation with the Ombudsman's office on 31 August 2006 about jurisdiction and procedural steps to be taken under the Ombudsman Act.[306]

9.3 Ombudsman Act investigation commences

In September 2006, the Ombudsman decided the allegations against Nestor were reportable and that these allegations should be investigated in accordance with the investigation provisions in the Ombudsman Act.[307] On 22 September 2006, Sister Hanlen confirmed in writing to the Ombudsman's office that the Diocese would comply with its obligations under Part 3A of the Ombudsman Act.[308] The Ombudsman opted to monitor the Diocese's investigation under section 25E of the Ombudsman Act.[309]

In January 2007, the Diocese formally appointed external investigators, Kamira Stacey Consulting (Kamira Stacey), to conduct the investigation under the Ombudsman Act.[310] Sister Hanlen coordinated and assisted this investigation.[311] The investigation included

contacting and interviewing complainants, putting the allegations they had investigated to Nestor and giving him the opportunity in writing and in a recorded interview to respond in detail.[312]

Sister Hanlen and Ms Chittick (then the child protection officer at the Catholic Education Office) contacted potential witnesses in the investigation to explain the situation and ask whether they would be willing to assist Kamira Stacey with their investigation.[313] Potential witnesses included those who attended the camps that Nestor had organised and their parents, as well as friends of Nestor and others who helped Nestor to organise and run the camps.[314] Kamira Stacey then arranged to interview participating witnesses. Sister Hanlen and Ms Chittick also helped Kamira Stacey to obtain relevant documentation, including from the New South Wales Police Force and DoCS.[315]

9.4 Nestor's input into Ombudsman Act investigation

Nestor was informed that an investigation had commenced under the Ombudsman Act and that Kamira Stacey would put to him the allegations against him for his comment.[316] Kamira Stacey did this by letter on 11 October 2007.[317] Nestor responded on 4 November 2007.[318] Nestor was then interviewed by Kamira Stacey on 27 November 2007.[319]

9.5 Ombudsman Act investigation final report and findings

Kamira Stacey presented its final report in May 2008.[320] Ultimately, Kamira Stacey investigated four allegations, which were documented in the final report. Three of these allegations concerned complaints made by purported victims of indecent or sexual assault by Nestor. On the balance of probabilities, Kamira Stacey concluded that one of these allegations was not sustained and the other two were – in particular, that:[321]

- Nestor had sexually molested ABA in the incident that had been the subject of the criminal trial[322]
- Nestor had sexually molested ABO, then aged nine, at an alter server's camp in 1993 by fondling ABO's penis with his hand and putting his hand down ABO's tracksuit pants and rubbing him on the 'bottom'.[323]

The fourth allegation concerned Nestor engaging in a pattern of sexual misconduct during about 1989 to 1993. This allegation was sustained.[324]

On 4 June 2008, Sister Hanlen gave Kamira Stacey's final report to the Ombudsman on behalf of Bishop Ingham.[325]

The Ombudsman had previously told the Diocese that the Diocese was required under the Ombudsman Act to, among other things, form its own view on whether it accepted the recommendations of the Kamira Stacey report and to notify Nestor and the Ombudsman of this.[326]

On 12 June 2008, Bishop Ingham wrote to Nestor and told him that, after studying the Kamira Stacey report, he had reached a preliminary finding that three out of the four

allegations were sustained. He gave Nestor the opportunity to respond to him. Nestor responded by letter on 29 June 2008 asking that Bishop Ingham reconsider his findings on the sustained allegations and giving reasons why Bishop Ingham should reconsider those findings.[327]

On 19 August 2008, after considering Nestor's response of 29 June 2008 to his preliminary finding, Bishop Ingham notified Nestor that he had reached the same finding that he had originally.[328] Sister Hanlen gave a copy of this correspondence to the Ombudsman.[329]

On 26 August 2008, the Diocese reported Nestor to the NSW CCYP pursuant to section 39 of the CCYP Act.[330] This meant that potential employers would be notified if Nestor was required to undertake a Working with Children Check in the future.[331]

On 26 August 2008, Bishop Ingham informed Nestor that he had been reported to the NSW CCYP.[332]

On 21 October 2008, the Ombudsman advised that they were satisfied that the Diocese had handled the matter appropriately and that they would now close the file.[333]

10 Canonical penal process and dismissal from the clerical state

On 27 August 2008, after the Ombudsman investigation had concluded, Bishop Ingham commenced a process under canon 1717 of the CIC83 on the basis that he had received information that appeared to indicate that Nestor may have committed serious offences against Church law.[334]

A penal process under canon law takes place according to the provisions of the CIC83. It is generally only through this penal process that a penalty such as dismissal from the clerical state can be imposed.[335]

Bishop Ingham issued two decrees:

- the first decree opened the preliminary investigation of a penal process under canon 1717 to investigate the allegations against Nestor; admitted the Kamira Stacey report into the Acts of the case (meaning that it formed part of the formal record of the investigation); and appointed Father Greg Homeming to serve as auditor[336]
- the second decree appointed Father Homeming as auditor for the preliminary investigation and directed him to conduct an appropriate investigation on behalf of Bishop Ingham.[337]

On 29 August 2008, Father Homeming accepted this appointment.[338]

Nestor was notified of these decrees on 29 August 2008.[339]

The preliminary investigation involved relying principally on the Kamira Stacey report and obtaining from witnesses sworn confirmations of their previous statements.[340] This was to meet a requirement in canon law that there be sworn testimony in such an investigation.[341] Bishop Ingham gave guidance to Father Homeming about the processes to follow when obtaining sworn testimony.[342]

Father Homeming completed his report on 1 September 2008.[343]

On 10 September 2008, Bishop Ingham decreed the preliminary investigation closed.[344] He submitted[345] the documentation of the investigation to Cardinal William Levada, the Prefect of the CDF, for his guidance under Article 13[346] of the 2001 SST and canon 1717 of the CIC83.[347] The documentation included five volumes of materials, including the formal 'votum' setting out in detail the history of the Nestor matter, a summary of the case and the evidence against Nestor, and Kamira Stacey's documentation on their investigation.[348] Under Article 13 of the 2001 SST, if there was at least a semblance of truth in the report, a bishop was to refer the report of a grave delict to the CDF once a preliminary investigation under canon 1717 of the CIC83 was completed.[349]

Sister Hanlen gave evidence that guidance from the CDF was sought because that is what the relevant canon law process required.[350]

Under the 2001 SST, the CDF had jurisdiction over cases involving a delict committed by a cleric with a minor under the age of 18 years. The SST also set out how the CDF was to judge the case.[351]

On 26 September 2008, the CDF decided to dispense with the requirement for a penal judicial process and requested the Pope to dismiss Nestor from the clerical state '*ex officio et in poenam*'.[352] The CDF was able to do this under Article 17 of the 2001 SST. While that article requires the more grave delicts reserved to the CDF to be tried in a judicial process, the CDF is able to dispense with this where the CDF considers that the case should be referred directly to the Pope for an *ex officio* dismissal.[353]

Pope Benedict XVI issued the decree of dismissal on 17 October 2008.[354] The decree:

- deprived Nestor of the rights, and released him from the obligations, of a priest, including celibacy
- excluded him from the exercise of ministry (except to hear the confessions of and absolve those in imminent danger of death)
- placed restrictions on his ability to work in seminaries and theological colleges or to teach theology or religion in universities or schools.[355]

The Pope's decree stated that Bishop Ingham was to make sure, as far as possible, that the decree did not cause scandal to the faithful, but he could make public the fact of the dismissal and its canonical basis if 'there [was] a danger of abuse to minors'.[356]

Under the 2001 SST, the Nestor case was subject to the 'pontifical secret': a particular secrecy that must be observed as a grave obligation.[357] Those who are bound by the pontifical secret are placed under a solemn obligation to preserve it forever.[358] The decree effectively relieved Bishop Ingham of this obligation if children were at risk.[359]

Bishop Ingham notified Nestor[360] and the people involved with the Nestor case, including the complainants, of the decree and the outcome of the CDF process.[361] However, Bishop Ingham did not generally publicise Nestor's dismissal from the clerical state.[362]

Bishop Ingham gave evidence that he agreed it would have been a safer option, as far as the protection of children was concerned, to have made it known to the faithful of Wollongong by some form of pastoral letter or public announcement that Nestor had been dismissed from the clerical state.[363] Bishop Ingham explained that he did not make the dismissal public because of Nestor's threatening attitude. He considered that those who were affected were informed directly.[364] He also explained that by then the matter had been 'off the radar' for quite some time.[365]

On 4 March 2009, Nestor wrote to the CDF complaining of the way that he had been treated and inviting the CDF to 'correct itself'.[366] However, on 30 March 2009 the CDF wrote that there was no possibility of any recourse against the Pope's decree.[367]

Finding 8

Once the Diocese's case regarding Nestor, dated 10 September 2008, was received:

1. the Congregation for the Doctrine of the Faith acted in a timely manner by deciding to dispense with the requirement for a penal judicial process and requesting that the Pope dismiss Nestor from the clerical state *ex officio et in poenam* on 26 September 2008
2. Pope Benedict XVI acted in a timely manner by issuing a decree dismissing Nestor from the clerical state on 17 October 2008.

▶ **Finding 9**

Bishop Peter Ingham should have made it known publicly that Nestor had been dismissed from the clerical state because of the findings of child sexual abuse and other inappropriate conduct made against him.

APPENDIX A: Terms of Reference

Letters Patent

ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth:

TO

The Honourable Justice Peter David McClellan AM,
Mr Robert Atkinson,
The Honourable Justice Jennifer Ann Coate,
Mr Robert William Fitzgerald AM,
Dr Helen Mary Milroy, and
Mr Andrew James Marshall Murray

GREETING

WHEREAS all children deserve a safe and happy childhood.

AND Australia has undertaken international obligations to take all appropriate legislative, administrative, social and educational measures to protect children from sexual abuse and other forms of abuse, including measures for the prevention, identification, reporting, referral, investigation, treatment and follow up of incidents of child abuse.

AND all forms of child sexual abuse are a gross violation of a child's right to this protection and a crime under Australian law and may be accompanied by other unlawful or improper treatment of children, including physical assault, exploitation, deprivation and neglect.

AND child sexual abuse and other related unlawful or improper treatment of children have a long-term cost to individuals, the economy and society.

AND public and private institutions, including child-care, cultural, educational, religious, sporting and other institutions, provide important services and support for children and their families that are beneficial to children's development.

AND it is important that claims of systemic failures by institutions in relation to allegations and incidents of child sexual abuse and any related unlawful or improper treatment of children be fully explored, and that best practice is identified so that it may be followed in the future both to protect against the occurrence of child sexual abuse and to respond appropriately when any allegations and incidents of child sexual abuse occur, including holding perpetrators to account and providing justice to victims.

AND it is important that those sexually abused as a child in an Australian institution can share their experiences to assist with healing and to inform the development of strategies and reforms that your inquiry will seek to identify.

AND noting that, without diminishing its criminality or seriousness, your inquiry will not specifically examine the issue of child sexual abuse and related matters outside institutional contexts, but that any recommendations you make are likely to improve the response to all forms of child sexual abuse in all contexts.

AND all Australian Governments have expressed their support for, and undertaken to cooperate with, your inquiry.

NOW THEREFORE We do, by these Our Letters Patent issued in Our name by Our Governor-General of the Commonwealth of Australia on the advice of the Federal Executive Council and under the Constitution of the Commonwealth of Australia, the *Royal Commissions Act 1902* and every other enabling power, appoint you to be a Commission of inquiry, and require and authorise you, to inquire into institutional responses to allegations and incidents of child sexual abuse and related matters, and in particular, without limiting the scope of your inquiry, the following matters:

a. what institutions and governments should do to better protect children against child sexual abuse and related matters in institutional contexts in the future;

b. what institutions and governments should do to achieve best practice in encouraging the reporting of, and responding to reports or information about, allegations, incidents or risks of child sexual abuse and related matters in institutional contexts;

c. what should be done to eliminate or reduce impediments that currently exist for responding appropriately to child sexual abuse and related matters in institutional contexts, including addressing failures in, and impediments to, reporting, investigating and responding to allegations and incidents of abuse;

d. what institutions and governments should do to address, or alleviate the impact of, past and future child sexual abuse and related matters in institutional contexts, including, in particular, in ensuring justice for victims through the provision of redress by institutions, processes for referral for investigation and prosecution and support services.

AND We direct you to make any recommendations arising out of your inquiry that you consider appropriate, including recommendations about any policy, legislative, administrative or structural reforms.

AND, without limiting the scope of your inquiry or the scope of any recommendations arising out of your inquiry that you may consider appropriate, We direct you, for the purposes of your inquiry and recommendations, to have regard to the following matters:

e. the experience of people directly or indirectly affected by child sexual abuse and related matters in institutional contexts, and the provision of opportunities for them to share their experiences in appropriate ways while recognising that many of them will be severely traumatised or will have special support needs;

f. the need to focus your inquiry and recommendations on systemic issues, recognising nevertheless that you will be informed by individual cases and may need to make referrals to appropriate authorities in individual cases;

g. the adequacy and appropriateness of the responses by institutions, and their officials, to reports and information about allegations, incidents or risks of child sexual abuse and related matters in institutional contexts;

h. changes to laws, policies, practices and systems that have improved over time the ability of institutions and governments to better protect against and respond to child sexual abuse and related matters in institutional contexts.

AND We further declare that you are not required by these Our Letters Patent to inquire, or to continue to inquire, into a particular matter to the extent that you are satisfied that the matter has been, is being, or will be, sufficiently and appropriately dealt with by another inquiry or investigation or a criminal or civil proceeding.

AND, without limiting the scope of your inquiry or the scope of any recommendations arising out of your inquiry that you may consider appropriate, We direct you, for the purposes of your inquiry and recommendations, to consider the following matters, and We authorise you to take (or refrain from taking) any action that you consider appropriate arising out of your consideration:

i. the need to establish mechanisms to facilitate the timely communication of information, or the furnishing of evidence, documents or things, in accordance with section 6P of the *Royal Commissions Act 1902* or any other relevant law, including, for example, for the purpose of enabling the timely investigation and prosecution of offences;

j. the need to establish investigation units to support your inquiry;

k. the need to ensure that evidence that may be received by you that identifies particular individuals as having been involved in child sexual abuse or related matters is dealt with in a way that does not prejudice current or future criminal or civil proceedings or other contemporaneous inquiries;

l. the need to establish appropriate arrangements in relation to current and previous inquiries, in Australia and elsewhere, for evidence and information to be shared with you in ways consistent with relevant obligations so that the work of those inquiries, including, with any necessary consents, the testimony of witnesses, can be taken into account by you in a way that avoids unnecessary duplication, improves efficiency and avoids unnecessary trauma to witnesses;

m. the need to ensure that institutions and other parties are given a sufficient opportunity to respond to requests and requirements for information, documents and things, including, for example, having regard to any need to obtain archived material.

AND We appoint you, the Honourable Justice Peter David McClellan AM, to be the Chair of the Commission.

AND We declare that you are a relevant Commission for the purposes of sections 4 and 5 of the *Royal Commissions Act 1902*.

AND We declare that you are authorised to conduct your inquiry into any matter under these Our Letters Patent in combination with any inquiry into the same matter, or a matter related to that matter, that you are directed or authorised to conduct by any Commission, or under any order or appointment, made by any of Our Governors of the States or by the Government of any of Our Territories.

AND We declare that in these Our Letters Patent:

child means a child within the meaning of the Convention on the Rights of the Child of 20 November 1989.

government means the Government of the Commonwealth or of a State or Territory, and includes any non-government institution that undertakes, or has undertaken, activities on behalf of a government.

institution means any public or private body, agency, association, club, institution, organisation or other entity or group of entities of any kind (whether incorporated or unincorporated), and however described, and:

i. includes, for example, an entity or group of entities (including an entity or group of entities that no longer exists) that provides, or has at any time provided, activities, facilities, programs or services of any kind that provide the means through which adults have contact with children, including through their families; and

ii. does not include the family.

institutional context: child sexual abuse happens in an ***institutional context*** if, for example:

iii. it happens on premises of an institution, where activities of an institution take place, or in connection with the activities of an institution; or

iv. it is engaged in by an official of an institution in circumstances (including circumstances involving settings not directly controlled by the institution) where you consider that the institution has, or its activities have, created, facilitated, increased, or in any way contributed to, (whether by act or omission) the risk of child sexual abuse or the circumstances or conditions giving rise to that risk; or

v. it happens in any other circumstances where you consider that an institution is, or should be treated as being, responsible for adults having contact with children.

law means a law of the Commonwealth or of a State or Territory.

official, of an institution, includes:

vi. any representative (however described) of the institution or a related entity; and

vii. any member, officer, employee, associate, contractor or volunteer (however described) of the institution or a related entity; and

viii. any person, or any member, officer, employee, associate, contractor or volunteer (however described) of a body or other entity, who provides services to, or for, the institution or a related entity; and

ix. any other person who you consider is, or should be treated as if the person were, an official of the institution.

related matters means any unlawful or improper treatment of children that is, either generally or in any particular instance, connected or associated with child sexual abuse.

AND We:

require you to begin your inquiry as soon as practicable, and

require you to make your inquiry as expeditiously as possible; and

require you to submit to Our Governor-General:

first and as soon as possible, and in any event not later than 30 June 2014 (or such later date as Our Prime Minister may, by notice in the *Gazette*, fix on your recommendation), an initial report of the results of your inquiry, the recommendations for early consideration you may consider appropriate to make in this initial report, and your recommendation for the date, not later than 31 December 2015, to be fixed for the submission of your final report; and

then and as soon as possible, and in any event not later than the date Our Prime Minister may, by notice in the *Gazette*, fix on your recommendation, your final report of the results of your inquiry and your recommendations; and

authorise you to submit to Our Governor-General any additional interim reports that you consider appropriate.

IN WITNESS, We have caused these Our Letters to be made Patent.

WITNESS Quentin Bryce, Governor-General of the Commonwealth of Australia.

Dated 11th January 2013

Governor-General

By Her Excellency's Command

Prime Minister

APPENDIX B: Public hearing

The Royal Commission	The Honourable Justice Peter McClellan AM (Chair) The Honourable Justice Jennifer Coate Mr Bob Atkinson AO APM Mr Robert Fitzgerald AM Professor Helen Milroy Mr Andrew Murray
Commissioners who presided	The Honourable Justice Peter McClellan AM (Chair) Mr Andrew Murray Professor Helen Milroy
Date of hearing	24–27 June 2014
Legislation	*Royal Commissions Act 1902* (Cth)
Leave to appear	The Truth Justice and Healing Council Catholic Diocese of Wollongong
Legal representation	A Stewart, Counsel Assisting the Royal Commission J Needham SC and B Keleher, instructed by S Glass and A Lenard of Gilbert + Tobin, appearing for the Truth Justice and Healing Council and the Catholic Diocese of Wollongong A Kernaghan, appearing for Father Mark O'Keefe
Pages of transcript:	422 pages
Summons to attend issued under *Royal Commissions Act 1923* (NSW) and documents produced:	9 summons to attend producing 4,031 documents
Notices to produce under *Royal Commissions Act 1902* (Cth) and documents produced:	19 notices to produce producing 8,450 documents

Number of exhibits:	22 exhibits consisting of a total of 404 documents tendered at the hearing
Witnesses:	1 **Father Graham Schmitzer** Former Chancellor of the Diocese of Wollongong
	2 **Father Brian Lucas** Former member of the Special Issues Committee and National Committee for Professional Standards
	3 **Archbishop Philip Wilson** Former Bishop of the Diocese of Wollongong
	4 **Father Kevin Matthews** Canonical advocate for Nestor
	5 **Father Mark O'Keefe** Parish Priest of the Immaculate Conception Parish at Unanderra, Diocese of Wollongong
	6 **Father Bryan Jones VG** Vicar-General of the Diocese of Wollongong
	7 **Bishop Peter Ingham** Bishop of the Diocese of Wollongong
	8 **Bishop Peter A Comensoli** Former Chancellor of the Diocese of Wollongong
	9 **Sister Moya Hanlen** Chancellor of the Diocese of Wollongong

Endnotes

1 Exhibit 14-0012, Case Study 14, STAT.0291.001.0001_M_R at 0002_M_R; Transcript of M O'Keefe, T8019:1–29 (Day 76); Exhibit 14-0001, Case Study 14, CTJH.500.41001.0001_R at 0002_R; Transcript of G Schmitzer, T7783:31–37 (Day 74); Exhibit 14-0002, Case Study 14, CTJH.001.03005.0083_R; Exhibit 14-0002, Case Study 14, CTJH.001.03006.0102_R.

2 Exhibit 14-0012, Case Study 14, STAT.0291.001.0001_M_R at 0002_M_R; Exhibit 14-0001, CTJH.500.41001.0001_R at 0002_R.

3 Transcript of G Schmitzer, T7783:39–46 (Day 74).

4 Exhibit 14-0012, Case Study 14, STAT.0291.001.0001_M_R at 0002_M_R; Transcript of M O'Keefe, T8019:1–14 (Day 76); Transcript of M O'Keefe, T8020:24–35 (Day 76); Transcript of M O'Keefe, T8023:30 (Day 76); Exhibit 14-0022, Case Study 14, CTJH.500.39001.0001_M_R at 0002_M_R-0003_M_R; Transcript of G Schmitzer, T7788:30–35 (Day 74).

5 Exhibit 14-0002, Case Study 14, CTJH.001.03006.0190_R; Exhibit 14-0002, Case Study 14, CTJH.001.03006.0102_R; Exhibit 14-0012, Case Study 14, STAT.0291.001.0001_M_R at 0002_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.03006.0098_R.

6 Exhibit 14-0002, Case Study 14, CTJH.001.03006.0098_R at 0099_R.

7 Exhibit 14-0001, Case Study 14, CTJH.500.41001.0001_R at 0002_R; Transcript of G Schmitzer, T7784:4 (Day 74).

8 Exhibit 14-0001, Case Study 14, CTJH.500.41001.0001_R at 0002_R.

9 Exhibit 14-0001, Case Study 14, CTJH.500.41001.0001_R at 0002_R.

10 Exhibit 14-0001, Case Study 14, CTJH.500.41001.0001_R at 0002_R.

11 Exhibit 14-0002, Case Study 14, CTJH.001.03006.0102_R.

12 Exhibit 14-0002, Case Study 14, CTJH.001.03006.0102_R at 0102_R.

13 Exhibit 14-0002, Case Study 14, CTJH.001.03006.0102_R at 0102_R.

14 Exhibit 14-0002, Case Study 14, CTJH.001.03006.0102_R at 0103_R-0104_R.

15 Exhibit 14-0002, Case Study 14, CTJH.001.03006.0102_R at 0103_R-0104_R.

16 Exhibit 14-0005, Case Study 14, CTJH.500.35001.0001_M_R at 0001_M_R-0002_M_R.

17 Exhibit 14-0005, Case Study 14, CTJH.500.35001.0001_M_R at 0002_M_R; Transcript of B Lucas, T7803:45 and T7832:26–42 (Day 74).

18 Exhibit 14-0005, Case Study 14, CTJH.500.35001.0001_M_R at 0002_M_R; Transcript of B Lucas, T7800:34–41 (Day 74).

19 Transcript of B Lucas, T7800:39 – T7801:4 (Day 74).

20 Transcript of B Lucas, T7804:5–10 (Day 74).

21 Exhibit 14-0002, Case Study 14, CTJH.0001.001.0295; Transcript of B Lucas, T7801:18–32 (Day 74).

22 Transcript of B Lucas, T7801:13–20 (Day 74).

23 Transcript of B Lucas, T7803:3 (Day 74).

24 Exhibit 14-0002, Case Study 14, CTJH.0001.001.0295 at 0299.

25 Exhibit 14-0002, Case Study 14, CTJH.0001.001.0295 at 0299.

26 Transcript of B Lucas, T7800:34 – T7801:28 (Day 74); Transcript of B Lucas, T7803:40 – T7804:10 (Day 74); Transcript of B Lucas, T7832:26 – T7834:26 (Day 74).

27 Transcript of B Lucas, T7809:33–47 (Day 74).

28 Transcript of B Lucas, T7810:1–17 (Day 74).

29 Transcript of B Lucas, T7810:19 – T7811:35 (Day 74); Transcript of B Lucas, T7815:33 – T7817:27 (Day 74); Transcript of B Lucas, T7826:7 – T7827:39 (Day 74); Transcript of B Lucas, T7834:35–45 (Day 74).

30 Transcript of B Lucas, T7821:24–32 (Day 74); Transcript of B Lucas, T7811:37–43 (Day 74).

31 Exhibit 14-0005, Case Study 14, CTJH.500.35001.0001_M_R at 0003_M_R.

32 Exhibit 14-0005, Case Study 14, CTJH.500.35001.0001_M_R at 0003_M_R.

33 Transcript of B Lucas, T7813:30–43 (Day 74); Transcript of B Lucas, T7822:4–10 (Day 74); Transcript of B Lucas, T7823:3 – T7825:6 (Day 74); Transcript of B Lucas, T7829:36 – T7831:25 (Day 74).

[34] Transcript of B Lucas, T7812:38 – 7813:6 (Day 74); Transcript of B Lucas, T7823:22–30 (Day 74); Transcript of B Lucas, T7824:32 – T7825:6 (Day 74); Transcript of B Lucas, T7829:24–27 (Day 74); Transcript of B Lucas, T7831:8–19 (Day 74); Transcript of B Lucas, T7823:22 – T7825:6 (Day 74).
[35] Transcript of B Lucas, T7831:40 – T7832:7 (Day 74).
[36] Transcript of B Lucas, T7831:40 – T7832:7 (Day 74).
[37] Transcript of B Lucas, T7811:26–35 (Day 74); Transcript of B Lucas, T7825:28–33 (Day 74).
[38] Transcript of B Lucas, T7812:1–8 (Day 74).
[39] Transcript of B Lucas, T7828:1–6 (Day 74).
[40] Transcript of B Lucas, T7828:8–10 (Day 74); Transcript of B Lucas, T7840:46 – T7841:4–12 (Day 74).
[41] Transcript of G Schmitzer, T7786:5–29 (Day 74); Exhibit 14-0002, Case Study 14, CCI.0500.00006.0037.
[42] Exhibit 14-0002, Case Study 14, CCI.0500.00006.0037.
[43] Exhibit 14-0001, Case Study 14, CTJH.500.41001.0001_R at 0002_R; Exhibit 14-0002, Case Study 14, CTJH.001.03006.0191_R.
[44] Exhibit 14-0002, Case Study 14, CTJH.001.03006.0191_R.
[45] Exhibit 14-0001, Case Study 14, CTJH.500.41001.0001_R at 0002_R; Transcript of G Schmitzer, T7789:2–8 (Day 74); Exhibit 14-0002, Case Study 14, CTJH.001.03006.0098_R at 0099.
[46] Transcript of G Schmitzer, T7789:2–8 (Day 74).
[47] Transcript of G Schmitzer, T7797:38–47 – T7798:13 (Day 74).
[48] Exhibit 14-0002, Case Study 14, CTJH.001.03006.0098_R at 0099_R.
[49] Exhibit 14-0001, Case Study 14, CTJH.500.41001.0001_R at 0002_R; Exhibit 14-0004, Case Study 14, CTJH.500.34001.0001_M_R at 0002_M_R.
[50] Exhibit 14-0004, Case Study 14, CTJH.500.34001.0001_M_R at 0001_M_R.
[51] Transcript of P Wilson, T7976:3–8 (Day 75).
[52] Exhibit 14-0004, Case Study 14, CTJH.500.34001.0001_M_R at 0003_M_R; Exhibit 14-0001, Case Study 14, CTJH.500.41001.0001_R at 0003_R; Transcript of G Schmitzer, T7789:10–26 (Day 74).
[53] Exhibit 14-0001, Case Study 14, CTJH.500.41001.0001_R at 0003_R; Transcript of G Schmitzer, T7789:16–36 (Day 74).
[54] Exhibit 14-0002, Case Study 14, CTJH.001.03006.0102_R at 0106_R.
[55] Transcript of G Schmitzer, T7789:38-47 (Day 74).
[56] Transcript of G Schmitzer, T7790:1–8 (Day 74); Exhibit 14-0001, Case Study 14, CTJH.500.41001.0001_R at 0003_R.
[57] Exhibit 14-0001, Case Study 14, CTJH.500.41001.0001_R at 0004_R; Exhibit 14-0004, Case Study 14, CTJH.500.34001.0001_M_R at 0003_M_R.
[58] Exhibit 14-0004, Case Study 14, CTJH.500.34001.0001_M_R at 0003_M_R.
[59] Exhibit 14-0004, Case Study 14, CTJH.500.34001.0001_M_R at 0003_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.1381_R.
[60] Exhibit 14-0001, Case Study 14, CTJH.500.41001.0001_R at 0004_R; Transcript of G Schmitzer, T7790:7–8 (Day 74).
[61] Exhibit 14-0002, Case Study 14, CTJH.001.03002.0087_R.
[62] Exhibit 14-0004, Case Study 14, CTJH.500.34001.0001_M_R at 0005_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.1313_R.
[63] Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0005_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0089; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0090.
[64] Exhibit 14-0002, Case Study 14, CTJH.001.12001.1322_R at 1323_R – 1324_R.
[65] Exhibit 14-0002, Case Study 14, CTJH.001.12001.1322_R at 1324_R.
[66] Exhibit 14-0002, Case Study 14, CTJH.001.12001.1322_R at 1325_R – 1326_R.
[67] Exhibit 14-0002, Case Study 14, CTJH.001.12001.1322_R.
[68] Exhibit 14-0002, Case Study 14, CTJH.001.12001.01322_R at 1333_R.
[69] *Department of Public Prosecution v John Gerard Nestor* (unreported, Wollongong Local Court, Magistrate Johnson, 18 February 1997).
[70] Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0006_M_R – 0007_M_R.
[71] Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0006_M_R – 0007_M_R; Transcript of P Wilson, T7866:1–2 (Day 74).
[72] Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0006_M_R – 0007_M_R; Transcript of P Wilson, T7866:4–9 (Day 74).
[73] Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0006_M_R – 0007_M_R.
[74] Transcript of P Wilson, T7861:9–11 (Day 74).

[75] Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0007_M_R; Transcript of P Wilson, T7866:37–45 (Day 74); Exhibit 14-0002, Case Study 14, CTJH.001.12001.1262; Exhibit 14-0002, Case Study 14, CTJH.001.12001.1263.
[76] Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0007_M_R.
[77] Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0008_M_R; Transcript of P Wilson, T7866:47 – T7867:5 (Day 74).
[78] Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0008_M_R – 0009_M_R; Exhibit 14-0002, Case Study 14, CTJH.402.05001.0569_R; Exhibit 14-0002, Case Study 14, CTJH.402.05001.0594_R.
[79] Exhibit 14-0002, Case Study 14, CTJH.402.05001.0569_R at 0582_R.
[80] Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0008_M_R; Exhibit 14-0002, Case Study 14, CTJH.402.05001.0569_R.
[81] Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0009_M_R; Exhibit 14-0002, Case Study 14, CTJH.402.05001.0569_R.
[82] Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0008_M_R; Transcript of P Wilson, T7866:47 – T7867:12–37 (Day 74).
[83] Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0008_M_R.
[84] Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0012_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.1215_R.
[85] Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0010_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.12003.0214_R.
[86] Exhibit 14-0002, Case Study 14, CTJH.001.03006.0102_R at 0111_R.
[87] Exhibit 14-0002, Case Study 14, CTJH.001.03006.0102_R at 0111_R.
[88] Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0012_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.03003.0093_R.
[89] Exhibit 14-0002, Case Study 14, CTJH.402.05001.0289_R.
[90] Exhibit 14-0002, Case Study 14, CTJH.001.12001.0999_R.
[91] Exhibit 14-0002, Case Study 14, CTJH.001.12001.0999_R at 1010_R.
[92] Exhibit 14-0002, Case Study 14, CTJH.001.12001.0999_R at 1005_R.
[93] Exhibit 14-0002, Case Study 14, CTJH.001.12001.0999_R at 1008_R-1009_R.
[94] Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0010_M_R; Transcript of P Wilson, T7977:18–25 (Day 75).
[95] Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0010_M_R; Transcript of P Wilson, T7868:19–24 (Day 74); Transcript of P Wilson, T7977:18–25 (Day 75).
[96] Exhibit 14-3, Case Study 14, CTJH.0001.001.0104; Exhibit 14-0003, Case Study 14, CTJH.0001.001.0073.
[97] Exhibit 14-0003, Case Study 14, CTJH.0001.001.0073.
[98] Exhibit 14-0003, Case Study 14, CTJH.0001.001.0104.
[99] Exhibit 14-0002, Case Study 14, CTJH.001.12001.1247; Transcript of P Wilson, T7868:37 – T7869:20 (Day 74).
[100] Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0010_M_ R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.1247; Exhibit 14-0002, Case Study 14, CTJH.001.12003.0230.
[101] Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0013_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.1017; Exhibit 14-0002, Case Study 14, CTJH.001.12001.1018; Exhibit 14-0003, Case Study 14, CTJH.0001.001.0104 at 0118–0119.
[102] Transcript of P Wilson, T7885:31–36 (Day 75).
[103] Transcript of P Wilson, T7878:16-20 (Day 75).
[104] Exhibit 14-0002, Case Study 14, CTJH.001.12001.1014_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.1075_R; Transcript of P Wilson, T7878:22–38 (Day 75).
[105] Exhibit 14-0002, Case Study 14, CTJH.001.12001.1017_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.1018_R.
[106] Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0012_M_R – 0013_M_R; Transcript of P Wilson, T7878:22–47 (Day 75); Exhibit 14-0003, Case Study 14, VATC.0002.001.0014.
[107] The Vatican, Glossary of Terms, http://www.vatican.va/resources/resources_glossary-terms_en.html (viewed 2 September 2014).
[108] The Vatican, Glossary of Terms, http://www.vatican.va/resources/resources_glossary-terms_en.html (viewed 2 September 2014).
[109] Transcript of P Wilson, T7879:27–37 (Day 75); Transcript of P Wilson, T7905:34–47 (Day 75).
[110] Transcript of P Wilson, T7904:46 – T7905:47 (Day 75).

111 Transcript of P Wilson, T7869:12–25 (Day 74); Transcript of P Wilson, T7879:24 – T7881:4 (Day 75).
112 Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0013_M_R.
113 Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0011_M_R; Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0013_M_R; Transcript of P Wilson, T7875:19–29 (Day 74); Transcript of P Wilson, T7873:5–23 (Day 74); Exhibit 14-0002, Case Study 14, CTJH.001.12001.1013_R.
114 Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0011_M_R; Transcript of P Wilson, T7869:45 – T7870:8 (Day 74).
115 Transcript of P Wilson, T7870:10–25 (Day 74); CIC83 c 265.
116 Exhibit 14-0003, Case study 14, VATC.0002.001.0026. CIC83 c 283 §1 states that:
'Even if clerics do not have a residential office, they nevertheless are not to be absent from their diocese for a notable period of time, to be determined by particular law, without at least the presumed permission of their proper ordinary.'
See also CIC83 c 27; Transcript of P Wilson, T7870:10–25 (Day 74).
117 Transcript of P Wilson, T7874:8–21 (Day 74).
118 Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0011_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.1014_R.
119 Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0013_M_R; Transcript of P Wilson, T7886:23–30 (Day 75).
120 Exhibit 14-0003, Case study 14, VATC.0002.001.0026. CIC83 c 273 states that:
'Clerics are bound by a special obligation to show reverence and obedience to the Supreme Pontiff and their own ordinary.' Transcript of P Wilson, T7880:11–13 (Day 75): an ordinary in a Diocese is the Bishop.
121 Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0013_M_R; Exhibit 14-0002. Case Study 14, CTJH.001.12001.1020_R; Transcript of P Wilson, T7886:2–19 (Day 75).
122 Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0014_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0198_R; Transcript of P Wilson, T7886:38–45 (Day 75).
123 Exhibit 14-0020, Case Study 14, CTJH.500.42001.0001_M at 0004_M.
124 Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0014_M_R.
125 Exhibit 14-0020, Case Study 14, CTJH.500.42001.0001_M at 0004_M.
126 Exhibit 14-0020, Case Study 14, CTJH.500.42001.0001_M at 0004_M.
127 Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0014_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.1023_R.
128 Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0017_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.1162; Transcript of P Wilson, T7900:10 – T7901:22 (Day 75).
129 Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0017_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.1161; Transcript of P Wilson, T7901:24–46 (Day 75).
130 Exhibit 14-0020, Case Study 14, CTJH.500.42001.0001_M at 0004_M.
131 Exhibit 14-0020, Case Study 14, CTJH.500.42001.0001_M at 0004_M.
132 Exhibit 14-0020, Case Study 14, CTJH.500.42001.0001_M at 0004_M.
133 Exhibit 14-0020, Case Study 14, CTJH.500.42001.0001_M at 0004_M.
134 Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0015_M_R; Transcript of P Wilson, T7887:25–34 (Day 75).
135 Transcript of P Wilson, T7968:38 – T7969:1 (Day 75).
136 Exhibit 14-0003, Case Study 14, VATC.0001.001.0006.
137 Exhibit 14-0003, Case Study 14, IND.0043.001.0068; Exhibit 14-0003, Case Study 14, VATC.0001.001.0085.
138 Exhibit 14-0003, Case Study 14, IND.0043.001.0068 at 0069: 2001 SST, art 4 §1.
139 Exhibit 14-0003, Case Study 14, VATC.0001.001.0006 at 0017: 1962 Instruction, Title Five.
140 Transcript of P Wilson, T7890:18–39 (Day 75); Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0014_M_R.
141 Exhibit 14-0003, Case Study 14, VATC.0001.001.0006 at 0006.
142 Transcript of P Wilson, T7889:10–24 (Day 75).
143 Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0014_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.12003.0186; Transcript of P Wilson, T7887:9–34 (Day 75).
144 Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0015_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.12003.0145; Transcript of P Wilson, T7888:1–12 (Day 75).
145 Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0014_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0384.

[146] Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0014_M_R; Transcript of P Wilson, T7888:23–34 (Day 75); Transcript of P Wilson, T7889:10–24 (Day 75).
[147] Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0015_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.12003.0178.
[148] Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0014_M_R at 0016_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.1026.
[149] Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0021_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.1043.
[150] Transcript of P Wilson, T7898:1–14 (Day 75).
[151] Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0022_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.1051; Transcript of P Wilson, T7898:28 – T7899:26 (Day 75).
[152] Transcript of P Wilson, T7898:36–42 (Day 75).
[153] Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0021_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.12003.0155.
[154] Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0015_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.03006.0102_R at 0104_R.
[155] Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0017_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.03006.0102_R at 0106_R.
[156] Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0017_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.1030_R; Exhibit 14-0002, Case Study 14, CTJH.001.03006.0102_R at 0105_R.
[157] Exhibit 14-0002, Case Study 14, CTJH.001.12001.1030_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.1075_R; Transcript of P Wilson, T7902:25–28 (Day 75).
[158] Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0019_M_R-0020_M_R; Exhibit 14-0002, Case Study 14, CTJH.402.05001.0289_R.
[159] Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0015_M_R; Exhibit 14-0002, Case Study 14, CTJH.402.05001.0289_R at 0290_R.
[160] Exhibit 14-0002, Case Study 14, CTJH.402.05001.0289_R at 0298_R.
[161] Exhibit 14-0002, Case Study 14, CTJH.402.05001.0289_R at 0299_R.
[162] Transcript of P Wilson, T7907:35 – T7908:16 (Day 75); Transcript of P Wilson, T7908:8–16 (Day 75).
[163] Exhibit 14-0002, Case Study 14, CTJH.402.05001.0289_R at 0296_R.
[164] Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0020_M_R; See Exhibit 14-0003, Case Study 14, CTJH.0001.001.0104 at 0116. Protocol 3.2.2 states that:
‘ The Resource Group shall act as adviser to all Church bodies in the province in matters concerning professional standards, both in general and in relation to specific cases.’
[165] Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0021_M_R-0022_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.1046 at 1048.
[166] Exhibit 14-0002, Case Study 14, CTJH.001.12001.1046 at 1048–1049.
[167] Exhibit 14-0002, Case Study 14, CTJH.001.12001.1054_R.
[168] Exhibit 14-0002, Case Study 14, CTJH.001.12001.1058.
[169] Transcript of P Wilson, T7912:2–10 (Day 75).
[170] Transcript of P Wilson, T7912:12–14 (Day 75).
[171] Exhibit 14-0003, Case Study 14, VATC.0002.001.0033. CIC83 c 381 §1 states:
‘A diocesan bishop in the diocese entrusted to him has all ordinary, proper, and immediate power which is required for the exercise of his pastoral function except for cases which the law or a decree of the Supreme Pontiff reserves to the supreme authority or to another ecclesiastical authority.’
[172] Transcript of P Wilson, T7910:34–45 (Day 75); Transcript of P Wilson, T7913:4–22 (Day 75); Exhibit 14-0002, Case Study 14, CTJH.001.12001.1058: reference to power under CIC83 c 835 §1.
[173] Transcript of P Wilson, T7911:20–31 (Day 75).
[174] Transcript of P Wilson, T7919:32–34 (Day 75).
[175] Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0036_M_R – 0037_M_R.
[176] Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0023_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.1198.
[177] Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0023_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.1198; Exhibit 14-0002, Case Study 14, CTJH.001.12003.0137_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.1086_R.
[178] Exhibit 14-0002, Case Study 14, CTJH.001.12001.1198; Exhibit 14-0002, Case Study 14, CTJH.001.03005.0071.

179 Exhibit 14-0002, Case Study 14, CTJH.001.03005.0072.
180 Transcript of M O'Keefe, T8031:38 – T8032:5 (Day 76); Exhibit 14-0012, Case Study 14, STAT.0291.001.0001_M_R 0006_M_R.
181 Transcript of P Wilson, T7965:12–39 (Day 76).
182 Exhibit 14-0012, Case Study 14, STAT.0291.001.0001_M_R at 0004_M_R – 0005_M_R.
183 Transcript of M O'Keefe, T8029:35 – T8031:5 (Day 76).
184 Transcript of M O'Keefe, T8034:30 – 8035:5 (Day 76).
185 Transcript of M O'Keefe, T8035:16–37 (Day 76).
186 Exhibit 14-0002, Case Study 14, CTJH.001.12001.1219.
187 Transcript of M O'Keefe, T8035:39 – T8036:44 (Day 76).
188 Transcript of M O'Keefe, T8026:18–26 (Day 76); Transcript of M O'Keefe, T8027:2–22 (Day 76); Transcript of M O'Keefe, T8028:10–33 (Day 76).
189 Transcript of M O'Keefe, T8036:46 – T8037:46 (Day 76).
190 Transcript of M O'Keefe, T8038:14–45.
191 Transcript of M O'Keefe, T8026:44 – T8027:2; Transcript of M O'Keefe, T8041:20–36; Transcript of M O'Keefe, T8042:42 – T8043:41.
192 Transcript of M O'Keefe, T8043:12–27; Transcript of M O'Keefe, T8036:1–5.
193 Transcript of M O'Keefe, T8036:1–5; Exhibit 14-0012, Case Study 14, STAT.0291.001.0001_M_R at 0005_M_R.
194 Transcript of M O'Keefe, T8038:1 – T8039:5.
195 Exhibit 14-0008, Case Study 14, DFAT.VATC.007.0211_R.
196 Exhibit 14-0008, Case Study 14, DFAT.VATC.007.0211_R.
197 Exhibit 14-0002, Case Study 14, CTJH.001.12001.0388 at 0390.
198 Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0025_M_R-0026_M_R; Transcript of P Wilson, T7918:47 – T7919:5.
199 Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0025_M_R; Transcript of P Wilson, T7917:20–24.
200 Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0025_M_R-0026_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.1090.
201 Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0026_M_R; Exhibit 14-0002, Case Study 14, CTJH.402.05001.0323; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0993.
202 Exhibit 14-0002, Case Study 14, CTJH.402.05001.0323.
203 Transcript of P Wilson, T7924:1–13.
204 Transcript of P Wilson, T7917:26–47; Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0006_M_R.
205 Transcript of P Wilson, T7931:35 – T7932:36; Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0028_M_R; Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0030_M_R.
206 Exhibit 14-0002, Case Study 14, CTJH.001.12001.0778; Transcript of P Wilson, T7920:1–23.
207 Transcript of P Wilson, T7920:25 – T7921:6 (Day 75); Exhibit 14-0002, Case Study 14, CTJH.001.12001.0759_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0757_R, Exhibit 14-0002, Case Study 14, CTJH.001.12001.0756.
208 Transcript of P Wilson, T7883:42 – T7884:5 (Day 75); Transcript of P Wilson, T7920:1–23 (Day 75); Transcript of P Wilson, T7883:44 – T7884:5 (Day 75); see also CIC83 cc 50, 273, 274 §2, 275 §1 and 1341, which refer to pastoral solutions and cooperation.
209 Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0002_M_R.
210 Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0002_M_R.
211 Exhibit 14-0002, Case Study 14, CTJH.001.12001.0387; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0388.
212 Exhibit 14-0002, Case Study 14, CTJH.001.12001.0388 at 0390
213 Exhibit 14-0002, Case Study 14, CTJH.001.12001.0388. CIC83 c 221 §3, which states that: 'The Christian faithful have the right not to be punished with canonical penalties except according to the norm of law', quoted in the CFC's decision.
214 Transcript of P Wilson, T7926:39–42 (Day 75).
215 The Vatican, Glossary of Terms, http://www.vatican.va/resources/resources_glossary-terms_en.html (viewed 14 July 2014): delict, according to the Vatican's Glossary of Terms, refers to 'a crime in canon law, an external violation of a law or precept gravely imputable by reason of malice or negligence'; Transcript of P Wilson, T7880:30–31 (Day 76); Transcript of M Hanlen, T8161:18–25 (Day 77).

216 Exhibit 14-0003, Case Study 14, VATC.0002.001.0014. CIC83 c 1718.
217 Transcript of P Wilson, T7926:45 – T7928:31 (Day 75); Exhibit 14-0002, Case Study 14, CTJH.001.12001.0388.
218 Exhibit 14-0002, Case Study 14, CTJH.001.12001.0388 at 0389-0390; Transcript of P Wilson, T7929:3–34 (Day 75).
219 Transcript of P Wilson, T7928:1–10 (Day 75); Transcript of P Wilson, T7929:3–34 (Day 75).
220 Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0030_M_R; Transcript of P Wilson, T7932:17–36 (Day 75); Transcript of P Ingham, T8071:3–23 (Day 76); Exhibit 14-0022, Case Study 14, CTJH.500.39001.0001_M_R at 0009_M_R.
221 Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0028_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.12003.0529; Exhibit 14-0002, Case Study 14, CTJH.001.12003.0536; Transcript of P Wilson, T7933:2 – T7934:20 (Day 75); Exhibit 14-0002, Case Study 14, CTJH.001.12003.0514; Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0028_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.12003.0003.
222 Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0032_M_R.
223 Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0033_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.12003.0441; Transcript of P Wilson, T7934:22–44 (Day 75).
224 Exhibit 14-0015, Case Study 14, CTJH.500.33001.0001_M_R at 0006_M_R-0007_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.12003.0454; Transcript of P Comensoli, T8111:24 – T8112:32 (Day 77); Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0031_M_R.
225 Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0033_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.12003.0442; Transcript of P Comensoli, T8114:10–47 (Day 77).
226 Exhibit 14-0002, Case Study 14, CTJH.001.12003.0640.
227 Exhibit 14-0022, Case Study 14, CTJH.500.39001.0001_M_R at 0009_M_R.
228 Exhibit 14-0022, Case Study 14, CTJH.500.39001.0001_M_R at 0008_M_R; Exhibit 14-0015, Case Study 14, CTJH.500.33001.0001_M_R at 0011_M_R.
229 Exhibit 14-0022, Case Study 14, CTJH.500.39001.0001_M_R at 0008_M_R; Exhibit 14-0002, Case study 14, CTJH.001.12003.0642.
230 Exhibit 14-0003, Case Study 14, VATC.0002.001.0011; Exhibit 14-0003, Case Study 14, VATC.0003.001.0001: CIC83 c 1416 states that if the tribunals are not subject to the same appellate tribunal, the Apostolic Signatura resolves conflicts of competence; see also the Apostolic Constitution, arts 121, 123 §3; CIC83 c 1442.
231 Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0032_M_R: this is a necessary step under Book V of CIC83.
232 Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0032_M_R-0033_M_R; Transcript of P Wilson, T7934:46 – T7935:19 (Day 75); Exhibit 14-0002, Case Study 14, CTJH.001.12001.0391.
233 Transcript of P Wilson, T7884:7–20 (Day 75): Scandal refers not just to the effect that conduct has on a particular person but also to the way in which the community in general (the faithful) can be affected by the conduct.
234 Exhibit 14-0006, Case Study 14, CTJH.500.37001.0001_M_R at 0032_M_R-0033_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0391.
235 Exhibit 14-0002, Case Study 14, CTJH.001.12001.0671; Transcript of B Jones, T8177:22–37 (Day 77).
236 Exhibit 14-0003, Case Study 14, VATC.0002.001.0019. CIC83 c 1735 provides that:
'If within thirty days after receiving the petition mentioned in can. 1734 the author of the decree communicates a new decree by which he either emends the earlier one or decides that the petition must be rejected, the time limits for making recourse run from the notification of the new decree. If the author makes no decision within the thirty days, however, the time limits run from the thirtieth day.'
237 Exhibit 14-0002, Case Study 14, CTJH.001.12001.0690; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0689.
238 Exhibit 14-0022, Case Study 14, CTJH.500.39001.0001_M_R at 0005_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0690.
239 Exhibit 14-0022, Case Study 14, CTJH.500.39001.0001_M_R at 0005_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.03006.0277.
240 Exhibit 14-0002, Case Study 14, CTJH.301.05001.0003.
241 Transcript of B Jones, T8184:6–16 (Day 77).
242 Exhibit 14-0002, Case Study 14, CTJH.301.05001.0003 at 0004.
243 Exhibit 14-0002, Case Study 14, CTJH.301.05001.0003 at 0003.

244 Exhibit 14-0002, Case Study 14, CTJH.301.05001.0003 at 0004.
245 Exhibit 14-0002, Case Study 14, CTJH.301.05001.0003 at 0004.
246 Exhibit 14-0022, Case Study 14, CTJH.500.39001.0001_M_R at 0005_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.12003.0425.
247 Exhibit 14-0022, Case Study 14, CTJH.500.39001.0001_M_R at 0009_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0397; Transcript of B Jones, T8176:3–18 (Day 77).
248 Exhibit 14-0022, Case Study 14, CTJH.500.39001.0001_M_R at 0010_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0661; Transcript of B Jones, T8177:12–20 (Day 77).
249 Exhibit 14-0002, Case Study 14, CTJH.001.03006.0235_T.
250 Exhibit 14-0022, Case Study 14, CTJH.500.39001.0001_M_R at 0010_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.03006.0235_T (translated from the original in Latin); Transcript of P Ingham, T8051:19 (Day 76).
251 Exhibit 14-0002, Case study 14, CTJH.001.03006.0235_T at 0236_T.
252 Transcript of P Ingham, T8049:11–20 (Day 76).
253 Exhibit 14-0022, Case Study 14, CTJH.500.39001.0001_M_R at 0010_M_R; Exhibit 14-0013, Case Study 14, CTJH.500.40001.0001_M_R at 0002_M_R.
254 Exhibit 14-0022, Case Study 14, CTJH.500.39001.0001_M_R at 0010_M_R; Exhibit 14-0013, Case Study 14, CTJH.500.40001.0001_M_R at 0004_M_R; Exhibit 14-0002, Case study 14, CTJH.001.12001.0653; Transcript of P Ingham, T8056:30–43 (Day 76); Exhibit 14-0015, Case Study 14, CTJH.500.33001.0001_M_R at 0013_M_R.
255 Exhibit 14-0013, Case Study 14, CTJH.500.40001.0001_M_R at 0005_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.02001.0170_T_R; Transcript of P Ingham, T8057:15–19 (Day 76); Exhibit 14-0002, Case Study 14, CTJH.001.12001.0450_T_R; Transcript of P Ingham, T8062:31–40 (Day 76).
256 Transcript of P Ingham, T8057:21 – T8058:40 (Day 76).
257 Exhibit 14-0002, Case Study 14, CTJH.001.02001.0170_T_R at 0180_T_R.
258 Exhibit 14-0002, Case study 14, CTJH.001.02001.0170_T_R at 0181_T_R.
259 Exhibit 14-0002, Case Study 14, CTJH.001.02001.0170_T_R at 0182_T_R.
260 CIC83 c 1430 states that:
'A promoter of justice is to be appointed in a diocese for contentious cases which can endanger the public good and for penal cases; the promoter of justice is bound by office to provide for the public good.'
261 Exhibit 14-0013, Case Study 14, CTJH.500.40001.0001_M_R at 0007_M_R ; Exhibit 14-0002, Case study 14, CTJH.001.12003.0455; Transcript of P Ingham, T8059:39–47 (Day 76).
262 Transcript of P Wilson, T7949:4–11 (Day 75).
263 Exhibit 14-0002, Case Study 14, CTJH.001.12001.0475_R; Transcript of P Wilson, T7950:26–38 (Day 75); Transcript of P Ingham, T8060:11–29 (Day 76); Exhibit 14-0013, Case Study 14, CTJH.500.40001.0001_M_R at 0008_M_R; Exhibit 14-0015, Case Study 14, CTJH.500.33001.0001_M_R at 0016_M_R.
264 Exhibit 14-0013, Case Study 14, CTJH.500.40001.0001_M_R at 0011_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.12003.0637_R.
265 Exhibit 14-0013, Case Study 14, CTJH.500.40001.0001_M_R at 0009_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0473_T; Transcript of P Ingham, T8062:12–29 (Day 76).
266 Exhibit 14-0015, Case Study 14, CTJH.500.33001.0001_M_R at 0014_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.12003.0462; Transcript of P Ingham, T8059:2–22 (Day 76); Exhibit 14-0015, Case Study 14, CTJH.500.33001.0001_M_R at 0015_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.12003.0459; Exhibit 14-0013, Case Study 14, CTJH.500.40001.0001_M_R at 0010_M_R-0011_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0424; Transcript of P Ingham, T8064:9–36 (Day 76); Exhibit 14-0002, Case Study 14, CTJH.001.12003.0455.
267 Exhibit 14-0002, Case Study 14, CTJH.001.12001.0424.
268 Exhibit 14-0002, Case Study 14, CTJH.001.03006.0007_T; Transcript of P Ingham, T8065:24–44 (Day 76).
269 Exhibit 14-0002, Case Study 14, CTJH.001.12001.0360; Exhibit 14-0015, Case Study 14, CTJH.500.33001.0001_M_R at 0019_M_R; Exhibit 14-0013, Case Study 14, CTJH.500.40001.0001_M_R at 0011_M_R.
270 Exhibit 14-0002, Case Study 14, CTJH.001.12001.0350 (translated from the original in Latin).
271 Exhibit 14-0002, Case Study 14, CTJH.001.12001.0350 at 0353.
272 Exhibit 14-0002, Case Study 14, CTJH.001.12001.0350 at 0352 – in particular, arts 112 §2 and 121 §2 and 137 §1 of the General Ordering of the Roman Curia of 1992 (cf arts 128 §2 and 137 §1 or the Ordering of 1999).

273 Exhibit 14-0003, Case Study 14, IND.0043.001.0068 at 0069. 2001 SST art 4.1 states that:
'Reservation to the [CDF] is also extended to a delict against the sixth commandment of the Decalogue committed by a cleric with a minor below the age of eighteen years.'

274 CIC83 c 764 states that:
'Without prejudice to the provisions of Canon 765, priests and deacons, with the at least presumed consent of the rector of a church, have the faculty to preach everywhere, unless this faculty has been restricted or removed by the competent Ordinary, or unless particular law requires express permission.'

275 CIC83 c 974 §1 states:
'The local ordinary and the competent superior are not to revoke the faculty to hear confessions habitually except for a grave cause.'

276 Exhibit 14-0002, Case Study 14, CTJH.001.12001.0350 at 0352-0353; Transcript of P Wilson, T7952:41 – T7953:19 (Day 75); Transcript of P Wilson, T7954:44 – T7955:42 (Day 75).

277 Exhibit 14-0002, Case Study 14, CTJH.001.12001.0350 at 0353.

278 Exhibit 14-0002, Case Study 14, CTJH.001.12001.0350 at 0352.

279 Exhibit 14-0002, Case Study 14, CTJH.001.12001.0258_R; Exhibit 14-0002, Case Study 14, CTJH.001.03006.0116_R; Transcript of B Jones, T8181:17–30 (Day 77); Exhibit 14-0002, Case Study 14, CTJH.001.12001.0594_R.

280 Exhibit 14-0002, Case Study 14, OMB.0004.001.0718; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0258_R; Exhibit 14-0002, Case Study 14, CTJH.001.03006.0031_R; Exhibit 14-0002, Case Study 14, CTJH.001.03006.0034_R.

281 Exhibit 14-0002, Case Study 14, CTJH.001.12001.0127_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0007_R.

282 Transcript of P Wilson, T8074:7 – T8078:44 (Day 76); Exhibit 14-0002, Case Study 14, CTJH.001.12001.0673; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0596; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0665; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0609; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0591; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0588; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0575; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0576; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0573_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0551; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0549; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0519; Exhibit 14-0002, Case Study 14, CTJH.001.12003.0564_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0509_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0502_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0444_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0435_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0412; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0377.

283 Transcript of P Wilson, T8074:7 – T8078:44 (Day 76); Exhibit 14-0002, Case Study 14, CTJH.001.12001.0673; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0596; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0665; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0609; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0591; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0588; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0575; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0576; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0573_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0551; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0549; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0519; Exhibit 14-0002, Case Study 14, CTJH.001.12003.0564_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0509_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0502_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0444_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0435_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0412; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0377.

284 Transcript of P Wilson, T7870:10–25 (Day 74); CIC83 c 265.

285 Transcript of P Wilson, T7870:10–25 (Day 74); CIC83 c 283; Exhibit 14-0003, Case Study 14, VATC.0002.001.0026.

286 CIC83 c 271 §2.

287 CIC83 c 271 §1.

288 Excardination means a priest is permanently released from the jurisdiction of the diocese into which he was incardinated.

289 CIC83 c 269 §2.

290 Transcript of P Ingham, T8050:2–34 (Day 76).

291 Exhibit 14-0002, Case Study 14, CTJH.001.12001.0618_R.

292 Exhibit 14-0002, Case Study 14, CTJH.001.12001.0594_R.

293 Exhibit 14-0002, Case Study 14, CTJH.001.12001.0596.
294 Exhibit 14-0002, Case Study 14, CTJH.001.12001.0665.
295 Exhibit 14-0013, Case Study 14, CTJH.500.40001.0001_M_R at 0013_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.02001.0299; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0308; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0309; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0312_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0314_R; Transcript of P Ingham, T8081:33 – T8082:12 (Day 76).
296 Exhibit 14-0007, Case Study 14, DFAT.VATC.007.0504_R at 0505_R.
297 Transcript of P Wilson, T7922:14–33 (Day 75).
298 Exhibit 14-0002, Case Study 14, CTJH.001.12001.1053; Exhibit 14-0009, Case Study 14, CTJH.001.12001.1079_R; Exhibit 14-0009, Case Study 14, CTJH.001.12001.1085_R; Exhibit 14-0008, Case Study 14, DFAT.VATC.007.0209_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0388; Exhibit 14-0007, Case Study 14, DFAT.VATC.007.0191_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0007_R.
299 *Ombudsman Amendment (Child Protection and Community Services) Act 1998* (NSW), s 3 and Sch 1.
300 *Commission for Children and Young People Act 1998* (NSW), s 39.
301 Transcript of P Comensoli, T8117:36–45 (Day 77).
302 Exhibit 14-0015, Case Study 14, CTJH.500.33001.0001_M_R at 0016_M_R; Exhibit 14-0002, Case Study 14, CTJH.305.01001.0030_R; Transcript of P Comensoli, T8118:6–45 (Day 77); Exhibit 14-0015, Case Study 14, CTJH.500.33001.0001_M_R at 0017_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.12003.0644_R; Transcript of P Comensoli, T8119:17–25 (Day 77); Exhibit 14-0015, Case Study 14, CTJH.500.33001.0001_M_R at 0018_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0438; Exhibit 14-0002, Case Study 14, CTJH.305.01001.0014; Transcript of P Comensoli, T8119:40 (Day 77).
303 *Ombudsman Amendment (Designated Agencies) Regulation 2000* (NSW), cl 7.
304 *Ombudsman Regulation 2005* (NSW), cl 6.
305 Exhibit 14-0015, Case Study 14, CTJH.500.33001.0001_M_R at 0020_M_R; Exhibit 14-0016, Case Study 14, CTJH.500.32001.0001_M_R at 0006_M_R; Exhibit 14-0002, Case Study 14, OMB.0004.001.0717.
306 Exhibit 14-0016, Case Study 14, CTJH.500.32001.0001_M_R at 0007_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0132; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0131; Transcript of M Hanlen, T8131:34 – T8132:30 (Day 77).
307 Exhibit 14-0016, Case Study 14, CTJH.500.32001.0001_M_R at 0007_M_R; Exhibit 14-0002, Case Study 14, CTJH.002.02003.0025; Transcript of M Hanlen, T8132:38 – T8133:38 (Day 77).
308 Exhibit 14-0002, Case Study 14, CTJH.001.02001.0808; Transcript of M Hanlen, T8135:31–47 (Day 77).
309 Exhibit 14-0002, Case Study 14, CTJH.001.12001.0141; Transcript of M Hanlen, T8135:37–47 (Day 77); Exhibit 14-0016, Case Study 14, CTJH.500.32001.0001_M_R at 0008_M_R – 0009_M_R.
310 Exhibit 14-0002, Case Study 14, CTJH.001.02001.0342_R.
311 Exhibit 14-0016, Case Study 14, CTJH.500.32001.0001_M_R at 0007_M_R; Transcript of M Hanlen, T8133:40 – T8134:1–21 (Day 77).
312 Transcript of M Hanlen, T8134:1 – T8135:29 (Day 77).
313 Exhibit 14-0016, Case Study 14, CTJH.500.32001.0001_M_R at 0009_M_R; Transcript of M Hanlen, T8134:10–37 (Day 77).
314 Exhibit 14-0016, Case Study 14, CTJH.500.32001.0001_M_R at 0010_M_R; Transcript of M Hanlen, T8134:10–37 (Day 77); Transcript of M Hanlen, T8135:24–29 (Day 77).
315 Exhibit 14-0016, Case Study 14, CTJH.500.32001.0001_M_R at 0010_M_R; Transcript of M Hanlen, T8134:10–21 (Day 77); Transcript of M Hanlen, T8134:39–44 (Day 77).
316 Exhibit 14-0002, Case Study 14, CTJH.001.12001.0305_R; Exhibit 14-0002, Case Study 14, CTJH.001.02001.0813_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0239_R.
317 Exhibit 14-0002, Case Study 14, CTJH.001.02001.0459_R.
318 Exhibit 14-0002, Case Study 14, CTJH.001.03008.0028_R.
319 Exhibit 14-0013, Case Study 14, CTJH.500.40001.0001_M_R at 0016_M_R; Exhibit 14-0016, Case Study 14, CTJH.500.32001.0001_M_R at 0011_M_R.
320 Exhibit 14-0002, Case Study 14, CTJH.001.03005.0002_R; Transcript of P Ingham, T8087:22–41 (Day 76).
321 Exhibit 14-0002, Case Study 14, CTJH.001.03005.0002_R; Transcript of P Ingham, T8088:5 – T8089:5 (Day 76).
322 Exhibit 14-0002, Case Study 14, CTJH.001.03005.0002_R at 0009_R-0010_R.
323 Exhibit 14-0002, Case Study 14, CTJH.001.03005.0002_R at 0010_R.
324 Exhibit 14-0002, Case Study 14, CTJH.001.03005.0002_R at 0010_R.
325 Exhibit 14-0002, Case Study 14, CTJH.001.12001.0257_R; Exhibit 14-0002, Case Study 14, CTJH.001.03005.0002_R; Transcript of M Hanlen, T8137:34–36 (Day 77).

[326] Exhibit 14-0002, Case Study 14, CTJH.001.12001.0246; Transcript of M Hanlen, T8136:26–41 (Day 77).
[327] Exhibit 14-0002, Case Study 14, CTJH.001.12001.0267_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0273_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0279_R; Transcript of P Ingham, T8089:35 – T8090:27 (Day 76).
[328] Exhibit 14-0002, Case Study 14, CTJH.001.12001.0279_R.
[329] Exhibit 14-0002, Case Study 14, CTJH.001.12001.0277; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0281.
[330] Exhibit 14-0002, Case Study 14, CTJH.001.03003.0168_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0282_R.
[331] *Commission for Children and Young People Act 1998* (NSW), ss 34(a) and 37.
[332] Exhibit 14-0002, Case Study 14, CTJH.001.12001.0283_R; Exhibit 14-0016, Case Study 14, CTJH.500.32001.0001_M_R at 0013_M_R.
[333] Exhibit 14-0002, Case Study 14, CTJH.001.12001.0300; Exhibit 14-0016, Case Study 14, CTJH.500.32001.0001_M_R at 0013_M_R – 0014_M_R.
[334] Exhibit 14-0013, Case Study 14, CTJH.500.40001.0001_M_R at 0018_M_R-0019_M_R; Transcript of P Ingham, T8091:12 – T8092:2 (Day 76).
[335] Transcript of P Wilson, T7883:1–11 (Day 75).
[336] Exhibit 14-0002, Case Study 14, CTJH.001.03006.0127; Transcript of P Ingham, T8091:3 – T8092:8 (Day 76).
[337] Exhibit 14-0002, Case Study 14, CTJH.001.03006.0128; Transcript of P Ingham, T8092:23–42 (Day 76).
[338] Exhibit 14-0002, Case Study 14, CTJH.001.03006.0130; Transcript of P Ingham, T8092:44–47 (Day 76).
[339] Exhibit 14-0002, Case Study 14, CTJH.001.03006.0131_R.
[340] Transcript of P Ingham, T8091:12–22 (Day 76); Exhibit 14-0016, Case Study 14, CTJH.500.32001.0001_M_R at 0015_M_R – 0016_M_R.
[341] Exhibit 14-0003, Case Study 14, VATC.0001.001.0006: The 1962 Instruction.
[342] Exhibit 14-0002, Case Study 14, CTJH.001.03006.0043_R; Transcript of P Ingham, T8092:27–42 (Day 76).
[343] Exhibit 14-0002, Case Study 14, CTJH.001.03006.0044_R; Exhibit 14-0016, Case Study 14, CTJH.500.32001.0001_M_R at 0016_M_R; Exhibit 14-0013, Case Study 14, CTJH.500.40001.0001_M_R at 0019_M_R; Transcript of P Ingham, T8098:32–34 (Day 77).
[344] Exhibit 14-0002, Case Study 14, CTJH.001.03006.0132; Exhibit 14-0013, Case Study 14, CTJH.500.40001.0001_M_R at 0019_M_R.
[345] Exhibit 14-0002, Case Study 14, CTJH.001.03006.0028; Transcript of P Ingham, T8090:39–43 (Day 76).
[346] Exhibit 14-0003, Case Study 14, IND.0043.001.0068: art 13 *2001 SST*.
[347] Transcript of M Hanlen, T8142:23 – T8143:8 (Day 77).
[348] Exhibit 14-0002, Case Study 14, CTJH.001.03006.0034_R; Exhibit 14-0002, Case Study 14, CTJH.001.03006.0098_R; Exhibit 14-0002, Case Study 14, CTJH.001.03006.0102_R; Exhibit 14-0002, Case Study 14, CTJH.001.03006.0116_R; Exhibit 14-0002, Case Study 14, CTJH.001.03006.0124.
[349] Exhibit 14-0003, Case Study 14, IND.0043.001.0068. 2001 SST, art 13 provides that:
'Whenever the Ordinary or Hierarch receives a report of a reserved delict which has at least a semblance of truth [*notitiam saltem verisimilem*], once the preliminary investigation has been completed, he is to communicate the matter to the Congregation for the Doctrine of the Faith which, unless it calls the case to itself due to particular circumstances, will direct the Ordinary or Hierarch [how] to proceed further, with due regard, however, for the right to appeal against a sentence of the first instance only to the Supreme Tribunal of the same Congregation.'
[350] Transcript of M Hanlen, T8139:33–47 (Day 77).
[351] Exhibit 14-0003, Case Study 14, IND.0043.001.0068: 2001 SST arts 4, 6, 7 and 13.
[352] Exhibit 14-0002, Case Study 14, CTJH.001.03006.0006; Exhibit 14-0003, Case Study 14, VATC.0002.001.0043: CIC83 c 1336 §1(5); Exhibit 14-0003, Case Study 14, VATC.0002.001.0031: CIC83 cc 332 §1, 333 §1 and 333 §3.
[353] Exhibit 14-0003, Case Study 14, IND.0043.001.0068; Transcript of M Hanlen, T8143:10–29 (Day 77).
[354] Exhibit 14-0002, Case Study 14, CTJH.001.12001.0060.
[355] Exhibit 14-0002, Case Study 14, CTJH.001.12001.0060.
[356] Exhibit 14-0002, Case Study 14, CTJH.001.12001.0060.
[357] Exhibit 14-0003, Case Study 14, IND.0043.001.0068: 2001 SST art 25; Transcript of M Hanlen, T8143:44 – T8144:6 (Day 77); Exhibit 14-0018, Case Study 14, VATC.0001.001.0001_T: Acts of the Apostolic See – Official Diary (1974), Vol 66.

[358] Exhibit 14-0018, Case Study 14, VATC.0001.001.0001_T: Acts of the Apostolic See – Official Diary (1974), Vol 66, art II, provides that cardinals, bishops, major prelates, higher and lower officers, advisers, experts and ministers of the lower orders are obliged to preserve the pontifical secret; Exhibit 14-0018, Case Study 14, VATC.0001.001.0001_T: Acts of the Apostolic See – Official Diary (1974), Vol 66, art III (1).

[359] Transcript of M Hanlen, T8144:8–23 (Day 77).

[360] Exhibit 14-0013, Case Study 14, CTJH.500.40001.0001_M_R at 0020_M_R – 0021_M_R; Exhibit 14-0013, Case Study 14, CTJH.500.40001.0001_M_R at 0022_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0029; Exhibit 14-0002, Case Study 14, CTJH.001.03006.0020_R; Exhibit 14-0002, Case Study 14, CTJH.001.03006.0010.

[361] Exhibit 14-0013, Case Study 14, CTJH.500.40001.0001_M_R at 0020_M_R – 0021_M_R; Exhibit 14-0002, Case Study 14, CTJH.001.12001.0029; Exhibit 14-0002, Case Study 14, CTJH.001.03006.0020_R; Transcript of P Ingham, T8103:28–42 (Day 77).

[362] Transcript of P Ingham, T8103:28–42 (Day 77).

[363] Transcript of P Ingham, T8103:28–42 (Day 77).

[364] Transcript of P Ingham, T8103:28–42 (Day 77).

[365] Transcript of P Ingham, T8103:44-45 (Day 77).

[366] Exhibit 14-0002, Case Study 14, CTJH.001.12001.0007_R.

[367] Exhibit 14-0002, Case Study 14, CTJH.001.03006.0009.

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