

# **REPORT**

OF THE BOARD OF INQUIRY INTO PAST HANDLING OF  
COMPLAINTS OF SEXUAL ABUSE IN THE ANGLICAN CHURCH  
DIOCESE OF BRISBANE

May 2003

The Board of Inquiry was constituted by:

**Mr Peter O'Callaghan QC** - Board Chair

**Professor Freda Briggs** – Board Member

**BOARD OF ENQUIRY  
INTO PAST HANDLING OF COMPLAINTS  
OF SEXUAL ABUSE IN THE ANGLICAN  
DIOCESE OF BRISBANE**

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# **BOARD OF ENQUIRY**

**into past handling of Complaints  
of sexual abuse in the Anglican**

**Diocese of Brisbane**

## **Report Overview**

- 1.1 Pursuant to the Terms of Reference (attached) the Board has enquired into the past handling of complaints of sexual abuse in the Anglican diocese of Brisbane, and now provides this Report to the Most Reverend Dr Phillip Aspinall, Archbishop of Brisbane.

### **Background**

- 1.2 During 1990, a twelve year old student boarder (called AB) at Toowoomba Preparatory School was the victim of protracted sexual abuse by Kevin Guy (deceased) who was employed as the resident House Master at the school. A classmate (CD) had been similarly abused and it was she who made the first complaint. Subsequently Guy was charged with the offence of indecently dealing with a minor (both girls) and on 18 December 1990, the day on which he was to appear in Court, Guy suicided.

- 1.3 When in November 1990 CD had complained to a House Mistress and then to the Head Master, her complaints were given limited credence. Similarly the complaints of AB. No unconditional apology was provided, and the diocese declined to reimburse the costs of counselling for these young girls who had been grossly abused, whilst in the care and control of the school.
- 1.4 There were meetings of the School Council and letters were written to parents which will be referred to hereunder. By about March 1991 the matter appeared to be closed. The girls moved on to other schools and for the next eight years the effects of the abuse and the perception of both girls that they had not been believed had a drastic effect on their lives. In 1998 AB decided to sue the diocese of Brisbane, because as she told her parents, "It is the only way I will be believed." CD likewise issued proceedings.
- 2.1 The trial of AB's claim against the diocese of Brisbane commenced in November 2001. A newspaper on 22 November reported that a witness had given evidence of having written a letter in 1990 to Dr Hollingworth, then the Archbishop of Brisbane<sup>1</sup>.
- 2.2 Thereafter the trial was in the headlines. On December 6 2001 the jury awarded AB \$400,000.00 compensatory damages and a record \$400,000.00 exemplary damages (both figures rounded).



2.3 A media frenzy erupted. In florid terms Dr Hollingworth was accused of insensitivity to victims of sexual abuse, failing to act in respect of complaints and “covering up” complaints; along with other allegations. Newspapers, TV and radio carried daily headlines revealing, so it seemed, that sexual abuse in Anglican institutions in the diocese of Brisbane were rife, but had been ignored or improperly handled. This was the milieu into which Archbishop Phillip Aspinall came on 2 February 2002 when he was installed as the Archbishop of Brisbane. Shortly after, Dr Aspinall announced that an Independent Enquiry would be established, and this Board was later appointed to enquire and report as prescribed by the terms of reference.

3.1 The terms of reference identified five sets of complaints, and provided for other complaints to be referred to the Board by the Archbishop.

The complaints identified in the terms of reference were against:

- (i) Kevin Guy deceased, the resident House Master of Toowoomba Preparatory School.
- (ii) Kevin Lynch deceased, who was the school counsellor of St Paul’s School, Bald Hills.
- (iii) Retired Bishop Donald Shearman.
- (iv) Ross McAuley, formerly Precentor of the Brisbane parish.
- (v) John Litton Elliot (former Parish Priest)

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<sup>1</sup> In this report the principal way of referring to the former Archbishop is as “Dr Hollingworth” although the Board recognises that his award of the Lambeth Degree of Doctor of Letters by the Archbishop of

3.2 Other complaints were referred to the Board. Two are the subject of detailed Reports. One complaint against Ross McAuley has not been further investigated or reported upon, because Court proceedings in respect of the matters the subject of that complaint, have been issued. Another complaint cannot be considered because the Respondent is awaiting trial. A number of other complaints have been considered, but they have been satisfactorily dealt with, and it is unnecessary to refer further to them.

### **The Diocese of Brisbane**

4.1 The diocese of Brisbane is large. It was established in 1859 and shares its boundary with Southern Queensland. Its' 150 parishes cover the area from Bundaberg in the north, Coolangatta in the south, and the Northern Territory border in the west. This is an area of more than 540,000 square kilometres with almost 2.7 million people, three quarters of the State's population living within its boundaries. Approximately 25% of the population are members of the Anglican Church of Australia. . ." Because of the size of the diocese and the number of matters which must be dealt with, the Archbishop is assisted by three Assistant Bishops who are responsible for geographical regions (northern, southern and western regions).

4.2 The Board would be naive if it did not recognise that there will be a great deal of public and media interest in this enquiry because the former

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Canterbury took place while he was Governor General Designate in May 2001.

Archbishop of Brisbane is now the Governor General of Australia. The Board makes it clear that Dr Hollingworth's appointment as Governor General and his continuing role in that position is not something upon which this Board will comment directly or indirectly. Such is entirely a matter outside the Terms of Reference of this Board of Enquiry. The only concern of the Board in relation to Dr Hollingworth is his involvement as the Archbishop of Brisbane in the handling of past complaints of sexual abuse.

### **The Procedures of the Board**

5.1 In order to comply with the requirements of the terms of reference, the Board had to ascertain in respect of a past complaint:

- (i) the identity of the Complainant;
- (ii) the identify of the person against whom the complaint was made;
- (iii) the person in authority to whom the complaint was made;
- (iv) the nature of the complaint;
- (v) the details of the way in which the complaint was handled, including, most importantly, the way in which it was disposed of.

5.2 Because there was extensive documentation recording matters of and incidental to the complaint, the first task of the Board was to identify the relevant documentation, and assemble it into a coherent and generally

chronological order. This was a time consuming and sometimes difficult task.

- 5.3 When this was done, a collection of these documented events was circulated to relevant stakeholders, in an endeavour to achieve agreement as to the basic facts. This was accompanied or followed by the Board submitting its preliminary conclusions and perceived areas of potential criticism to the relevant persons. This resulted in a lengthy and relatively complex exchange of correspondence between the Board and the stakeholders which has continued up to this time.
- 5.4 There has been criticism because it is said that the Board has not conducted hearings. This criticism is misconceived. The Board has been relevantly and adequately informed by reference to contemporaneous documentation concerning the particular complaint, and by written statements of fact, comment and submissions. The Board has also undertaken a small number of recorded telephone conversations. The Board has received a mass of documented information and comments and submissions from or on behalf of relevant persons.
- 6.1 Brave Hearts Inc. is a registered charity, and was previously known as Peoples' Alliance Against Child Sexual Abuse. The Board applauds the aims and objects of this organisation and wishes it well. Ms Hetty Johnston, the President of Brave Hearts, has been critical of the Board.

The Board has no objection to criticism, but is constrained to respond to it, because to do so might create a wrong impression.

6.2 In September 2002 Ms Johnston wrote to Archbishop Aspinall stating:

*“We have been told by various persons involved in the Toowoomba Prep and St Paul’s cases, that they will not be coming forward to give information to your Enquiry for a number of reasons but predominantly due to serious lack of trust issues and moreover, due to the pending or unsettled Court cases in relation to these matters.”*

This letter was made available to the Board which responded to Ms Johnston referring to Archbishop Aspinall’s statement, that there were now no longer any outstanding claims in respect of the Toowoomba Prep or St Paul’s Schools.

The Board then wrote:

*“The Board will be obtaining the essential details in which these cases were settled, which of course will throw light upon the way in which the complaints were handled.*

*Unless you are constrained by some obligation of confidentiality, the Board invites you to identify the persons who have stated that they have information which they will not provide for the reasons you state. If you are not able to identify the persons could you identify the information which you believe they have available but will not disclose. The Board awaits your reply.”*

No reply was received.

6.3 In February there was a spate of newspaper reports stating that persons able and willing to give evidence to the Board, or make submissions, had not done so. Consequently, on 17 February the Board placed a public

notice in the major metropolitan newspapers in Brisbane, Sydney and Melbourne which read:

*“The Board is completing its Enquiry and Report. There has recently been a spate of newspaper reports to the effect that persons able and willing to give evidence or make submissions to the Board have not done so.*

*The Board is not aware of any such persons, but if there are they should immediately contact the Chairman by phone . . . or by fax . . . or by writing . . . or . . . e-mail (numbers and addresses supplied).”*

Not one response was received to that notice.

- 6.4 The Board requested a reporter to identify the people who wished to give evidence to the Enquiry but she could not do so.

*“My editor has asked me to reply that it would be inappropriate for me to advise the Board of people who wished to give evidence or make submissions to the Enquiry.”*

No reason was given as to why this was considered to be inappropriate.

- 6.5 An article appearing in the Brisbane Sunday Mail on March 16 stated:

*“Potential key witnesses in an Anglican Church Enquiry into sex abuse allegations, including victims, parents, school staff and Governor General Peter Hollingworth – are unlikely to give evidence before it winds up on Friday. Only one person directly involved in the allegations has been called before the . . . Enquiry.*

*Child protection groups have dubbed the Enquiry a “whitewash” and question why those central to the scandal have not been questioned.*

*People who are central to these cases are now asking why they haven’t been asked to give evidence.*

*Brave Hearts President Hetty Johnston said. ‘If they (the Church) were genuine they would have been travelling to see all these people who have had involvement and generally asking for their recollection of events.’ ”*

- 6.6 There are serious misconceptions in that article. The obtaining of evidence need not be done by a viva voce hearing. The sources of evidence information or material available to the Board are as follows:
- (i) With respect to the complaints against Guy, the Resident House Master of the Toowoomba Preparatory School, the Board has access to the transcript of evidence of the witnesses called in the trial, and at the conclusion of which the jury found that the diocese and its employees had failed to take reasonable care of AB. That of course is conclusive of the issue of whether or not criticism can be made of the school's handling of the complaint in the sense that it knew or ought to have known of the potential of Guy to sexually abuse AB and others.
  - (ii) The Board has in fact spoken to CD and her mother, the latter on a number of occasions, and similarly the Board has spoken to the mother of AB, who herself does not want to be involved, and very naturally so.
  - (iii) With respect to Dr Hollingworth, the Board through his Solicitors, has received lengthy statements of facts and submissions on his behalf.
- 6.7 With respect to the complaints regarding St Paul's School, the Board has had access to the files of the diocesan Solicitors in respect of students who were the victims of sexual abuse by Lynch.

- 6.8 Similarly the Board has had a great deal of correspondence with the Solicitors for Mr Gilbert Case, the Head Master of St Paul's at the relevant time.
7. The Board was and remains unaware of persons from whom it should seek to obtain information and material. The basic source of the Board's knowledge of the persons who were involved in the complaints is the files of documents relating to each complaint. The Board is concerned only with the past handling of complaints. It is not an Enquiry into sexual abuse generally. If however someone who had not previously complained had come to the Board, that person would have been advised on how to facilitate a complaint.
- 8.1 The Board was concerned to ascertain whether there were people of whom the Board was unaware who had relevant information to give or comments to make. The Chairman wrote to Ms Johnston on 18<sup>th</sup> March 2003 and having referred to the article in the Sunday Mail, and the letter to Ms Johnston in September 2002, stated:

*"Whilst you have described a national advertisement as "a feeble attempt to contact interested parties", the fact is that not one response has been received to that advertisement. The Board is concerned to ascertain from you the identity of the potential key witnesses who "are unlikely to give evidence before it winds up on Friday . . . (in that context you are advised that the Enquiry will not wind up until 22 April. Further you state:*

*"People who are central to these cases are now asking why they haven't been asked to give evidence".*

*The Board is not aware of such persons whom you describe as "central to these cases". The Board would be greatly assisted if those persons can be identified.*



*Likewise, all these people who have had involvement and genuinely asking for their recollection of events.*

*You are accordingly requested to appear before the Board in order to provide the above information and other relevant evidence or submissions. The Board can meet with you at a time and place convenient. For instance the Board would be prepared to meet in Melbourne or Brisbane any day next week. Whilst the Board would prefer Melbourne, if that is less convenient to you the Board would readily go to another place . . .”*

Ms Johnston was also advised that travelling and accommodation expenses would be paid by the Board.

- 8.2 Following courteous and helpful conversation between the Chairman and Ms Johnston, she wrote to the Board stating, inter alia:

*“I stand firm in all statements attributed to me in your correspondence and did then and now make those statements with absolute belief in their accuracy.*

*As you would expect in matters such as this, Brave Hearts Inc. generally and in this case, its director specifically, are most definitely “constrained by obligations of confidentiality”, which will negate our ability to identify persons who have trusted us with their information, their thoughts and/or their pain.*

*It is entirely up to these individuals to decide if they wish to respond to generic public requests for information or not. We have found that many have already done so in the negative based on their perception of a lack of integrity and genuineness in the request by virtue of the Enquiry’s failure to contact them personally in the early stages of this Enquiry, and/or after undertaking a potential risk benefit assessment to other victims and families in doing so (a fear the Church is gathering defence material as ammunition against potential future litigants) and/or on their own personal ability and emotional strength to do so and/or based on what is generally a lack of remnant trust in the institution of the Church and/or a fear of defamation proceedings potentially being raised against them.*

*These “reasons” may or may not be accurate or justified in your view, and indeed, in fact (as is the case with the indemnity issue). However, these are some of the responses I have received and I offer them to you as a picture of what you are dealing with.*

*One of the people to whom I referred in the Sunday Mail has indicated that she is now willing to speak to the Enquiry after I informed her of the indemnity available to her.*

*In connection to this I note your invitation to myself to speak to the Enquiry and therefore took the liberty of speaking again with this person in relation to this. Both she and I would prefer the Enquiry came to Queensland for this interview. In fact, we prefer the Enquiry came to Brisbane and Toowoomba and that you make public the fact that you will be in Brisbane and Toowoomba and will be available to anyone else who has information that they may wish to provide the Enquiry. It is imperative that both Professor Briggs and Mr O'Callaghan are present.*

*Brave Hearts suggest also that you take the opportunity at that time to reiterate that indemnity is offered to all who provide information and/or speak to the Enquiry. . . “*

The letter then made some references to a Senate Enquiry which is another matter.

- 8.3 On 21 March the Chairman, on behalf of the Board, wrote to Ms Johnston stating, inter alia:

*“The persons to whom you refer are (it is believed) not known to the Board, hence the Board could not seek them out. The Board believes the best approach to take is to invite you to provide to those persons who you believe may be desirous of providing information to the Board and/or who may wish to appear before the Board the attached memorandum, questionnaire and indemnity. Would you be agreeable.*

*Naturally any expenses you incur will be reimbursed by the Board.*

*This gives to those persons the opportunity to decide whether they wish to provide information, and some assistance as to the sort of information sought. With respect to meeting with you and the lady whom you state is prepared to appear before the Board, we invite you and she to complete the indemnity and return it to the Board. Subject to your and her convenience, the Board proposes to meet with you in Brisbane on Wednesday 26 March at a place and time to be advised.”*

The following questionnaire was enclosed:

## 8.4 Questionnaire

*Name:*

*Address:*

*Occupation:*

1. *Do you wish to meet with the Board, and provide information with respect to the past handling by the Diocese of Brisbane of a complaint of sexual abuse.*
2. *If yes, do you wish to provide by this Questionnaire, some detail in respect of the complaint, or do you prefer to wait until you meet the Board.*
3. *If yes, can you state,*
  - a. *The name of the complainant*
  - b. *The name of the person against whom the complaint was made.*
  - c. *Approximately when and where*
    - i. *The sexual abuse occurred*
    - ii. *The complaint was made and to whom*
    - iii. *What was done in the handling of the complaint*
    - iv. *Any other information you consider appropriate*
4. *If you have any queries Mr O'Callaghan can be contacted on (03) 9225 7979 and Professor Briggs on (08) 83374102.*
5. *All the information provided in this Questionnaire shall be and remain confidential, until you specifically authorise the Board otherwise.*
6. *If so can you state when such complaint was first made and to whom.*
7. *Can you state as to the steps if any which were taken by the Diocese of Brisbane in respect of such complaint.*
8. *What information can you provide in relation to that past complaint.*
9. *Please make any other comment or submission that you consider appropriate.*
10. *Do you wish to appear before the Board. If so the Board will contact you and make appropriate arrangements.*
11. *Would it be convenient for you to meet with the Board in Brisbane on 9 April 2003.*

12. *Would you return this Questionnaire to Peter O'Callaghan Q.C., Owen Dixon Chambers West, 205 William Street, Melbourne 3000, or fax it to Peter O'Callaghan Q.C., (03) 225 7114. Because of time constraints it would be appreciated if this be done immediately.*

*Because of time constraints it is essential that you return this questionnaire as soon as possible.*

*If you do not have information with respect to a past complaint, have you any information with respect to a fresh complaint of sexual abuse by any person associated with the Brisbane Diocese. If so provide details."*

#### **“Memorandum from the Board**

*Ms Hetty Johnston of Brave Hearts has informed the Board of Enquiry that you are a person who may desire to meet with the Board and provide information.*

*Because she respects your confidence, Ms Johnston has not told the Board who you are, or what it is you would wish to tell the Board. In those circumstances and because the Board is anxious to ensure that it obtains all relevant evidence and comment, Ms Johnston has been asked to forward this Memorandum to you.*

*The Board's duty is to enquire into and report on the past handling of complaints of sexual abuse in the Diocese of Brisbane, and as to whether such complaints were handled fairly reasonably and appropriately.*

*Accordingly if you have information with respect to the handling of a past complaint (i.e. made before December 2001) of sexual abuse by any person associated with the Anglican Diocese of Brisbane, the Board would be anxious to obtain that information.*

*In order to help you with regard to giving information to the Board, there is attached a questionnaire which you may wish to complete and return to the Board.*

*The Diocese of Brisbane has resolved that any person giving evidence to the Board should be indemnified and there is also forwarded with this Memorandum and Questionnaire an Indemnity which you are invited to accept and return to the Board.*

*Peter O'Callaghan Q.C.  
Professor Freda Briggs  
21 March 2003”*

Ms Johnston replied:

*"Thank you for your correspondence of today which I have now received and read. As is normal practice, I will need to receive legal advice as to the strength of the indemnity offered and must await same before any final decision can be made with respect to meeting with the Board, and asking others, in all good conscience, to do the same.*

*In any event a meeting this week will not be possible for Brave Hearts simply because we too are busy. As well and more importantly, it would not give sufficient time to advertise the fact that the Enquiry will be in Brisbane and Toowoomba to hear from those still wishing to provide evidence to it. That opportunity, as I proposed it, was the reason you were to come to Queensland. Not providing time for these people to hear about your invitation and organise themselves to attend does nothing to engender participation and in fact works to make their involvement almost impossible.*

*Also you fail to address the issue I raised in relation to providing a full and edited version of the final Report to the recently announced Senate Enquiry. I now understand from my telephone conversation with Professor Briggs that this is an issue for the Archbishop so while I am sure you have already relayed my request, I have now contacted his office directly on this point.*

*Naturally advisers to these requests will likewise determine the extent to which we agree to be involved in the Enquiry. You state in your letter that "there are a number of matters in the letter to which the Board will respond later". Please note that any and all issues raised in my correspondence which you consider "outstanding" must be dealt with prior to any meeting which may occur.*

*If we could tentatively agree to meet on Wednesday 9 April. Feedback from potential participants in relation to time will obviously factor. Perhaps you should allow sufficient time in the event, hopefully, multiple people come forward to speak to you."*

8.5 On Wednesday 26<sup>th</sup> March the Chairman wrote to Ms Johnston on behalf of the Board stating, inter alia:

*"The essential concern of the Board is to give to persons, whom it is said may be willing to give information or make submissions to the Board, the means of doing so.*

*If, as appears to be the fact, Brave Hearts knows persons who may be willing to provide such information or submissions, they should be communicated with. Therefore and consistent with the confidentiality that Brave Hearts has to those persons, the Board repeats its request that Brave Hearts send to those persons the memorandum, the questionnaire and the form of indemnity referred to in previous correspondence. The Board confirms that Brave Hearts will be reimbursed for any costs in doing this. . .*

*It will be noted that in the questionnaire, 9 April is fixed as the date upon which persons can meet with the Board. Likewise it is confirmed that the Board will meet with you and the lady, to whom you have referred, on that date."*

Ms Johnston replied by email on 27 March 2003,

*"In response to your most recent letter, a copy of which follows this reply.*

*In the first instance I would like to state that I have already answered your question in the affirmative with regard to passing on your documents to potential respondents to your Enquiry. I did this on the 24th March at 2.13pm by email to your office. I have in fact already forwarded same to two potential respondents have suggested though, that they wait for our feedback on legal advise in relation to the Indemnity offered before doing anything. It is of course, entirely up to the individual as to what they chose to do in the end.*

*Please understand, we are trying to help remove obstacles to their participation, not create them. I am sure you would agree that your Board must provide a safe, protective and accessible venue for those who may consider offering assistance to your Enquiry.*

*Would you please clarify my understanding of your most recent correspondence. Am I correct to understand that:*

- The Enquiry does not intend to visit Toowoomba as requested;*
- The Enquiry is able to meet with others on the 9th April 2003 in addition to me and 'the lady';*
- The Enquiry does not intend to immediately deal with "the number of matters it intended to respond to later' as referred to in earlier correspondence from the Board and which we requested be dealt with directly;*

- *The Board is not keen to alert the public through media of the fact that they will be in Brisbane / Toowoomba? to listen to anyone who wants to participate.*

*You should note that I have now spoken with three people in total who will be prepared to speak to the Board of Enquiry provided proper Indemnity and Confidentiality is provided and:*

- *that access to the Enquiry is made convenient, available and that respondents are fully protected;*
- *that a copy of the Report be provided under 'Confidential' to the Senate Enquiry.*

*It is imperative that these housekeeping issues be dealt with expediently so we may concentrate our efforts on the job at hand - gathering information for your Enquiry. We need the remaining time before 9 April to try and garner media interest in your visit to Brisbane and to encourage a positive response from the public. I await your response."*

8.6 The Board received from Ms Johnston an amended form of indemnity which it passed on to the diocese for its consideration.

8.7 On 28 March 2003 the Chairman of the Board wrote setting out the position in relation to visiting Brisbane for the purposes of a hearing.

*"I refer to previous correspondence and in order to make clear the position of the Board in relation to visiting Brisbane and/or Toowoomba, it is desirable for there to be a full understanding of the role of this Board of Enquiry.*

*The Board is not empowered or required to enquire generally into matters of sexual abuse. It is to "enquire into and report upon the handling of (past) complaints of sexual abuse or misconduct made to a person in a position of responsibility and who handled that complaint".*

*Paragraph 1 of the Terms of Reference provides:*

*"The Board shall enquire into and report upon the past handling of the complaints against-*

- (a) The Reverend Ross McAuley*
- (b) Kevin George Guy (deceased)*

- (c) Kevin John Lynch (deceased)
- (d) The Right Reverend Donald Shearman
- (e) The Reverend John Litton Elliot
- (f) Such other complaints as the Archbishop may refer to the Board.”

*Ten other persons, the subject of complaints, have been referred to the Board, and have been duly considered.*

*It is important to appreciate that if a person comes to the Board and makes a fresh complaint of sexual abuse, i.e. one not previously made to a person in authority in the diocese of Brisbane, the Board has no jurisdiction to deal with that complaint. By definition that would not be a past complaint.*

*Of course the Board would facilitate the pursuit of the complaint by referring that person to the Chairperson of the CCSA, or as the case may be, recommending that the matter be reported to the police.*

*You ask whether the Board will visit Toowoomba. The answer is that it will if it is necessary to do so. Whether that be so will depend upon whether there are persons wishing to give information to the Board, and who could only be seen in Toowoomba, in distinction to Brisbane.*

*The Board naturally assumes that your references to Toowoomba relate to the complaints made in respect of Kevin Guy deceased. In order to enable a better understanding of the position, a brief summary of the enquiry into the Guy complaints is provided.*

*Two 12 to 13 year old girl boarders to be called in the Report AB and CD were sexually abused by Guy, who was consequently charged by the police and suicided.*

*The Board has investigated the handling of the complaint (subsequent to Guy's suicide) by the Head Master and other teachers at the school, the school council and the diocese. The Board is in a position to report thereon.*

*It has also enquired into the events occurring in the period leading up to the charging of and the suicide of Lynch. But, particularly with respect to that period, the Board is necessarily reliant upon and governed by the evidence given to and the verdict of the jury in the Supreme Court proceeding brought by AB against the diocese. You are aware no doubt that this resulted in AB obtaining very substantial compensatory and exemplary damages. The jury found that the diocese and its employees had failed to take reasonable care of AB. The verdict of the jury necessarily constitutes a*



*criticism of the diocese and its employees, because they were found to be negligent.*

*There is no further evidence required to establish that fact.*

*The other principal Complainant in respect of the Toowoomba Preparatory School was CD, who also brought proceedings in the Supreme Court which were settled by the payment of substantial damages to CD. Obviously, the settlement proceeded upon the basis that if the matter went to trial there would be a similar result as that which took place in AB's trial.*

*The Board is aware of another complaint which was made to persons in authority but which has not been pursued. The Board also understand that there are others who could have, but have not and further have indicated they will not make complaints.*

***Kevin John Lynch deceased***

*There is a marked similarity between the situation at St Paul's and that at Toowoomba. The Board is aware of the details of complaints made by a large number of students at St Paul's. Twenty six of those complaints were the subject of Court proceedings, and relevant statements and Court documents have been obtained by the Board. Those cases were settled on the assumption by the lawyers for the diocese that it would be more probable than not a jury would have found for the Plaintiffs i.e. a result much the same as what occurred in the Toowoomba litigation.*

*That assumption was tantamount to a jury verdict, and constitutes criticism of the diocese and its employees in that there was a failure to take reasonable care of the subject students.*

*That then is the picture, broadly drawn, of the position with respect to these two sets of complaints.*

*The Board does not propose to publicise its visit to Brisbane and/or Toowoomba so as to be able to listen to anyone who wants to participate. That seems to suggest that the Board will be conducting public hearings which is not the case.*

*Clause 8 of the Terms of Reference provides that:*

*"The proceedings of the Board shall be conducted in private, and the Board shall treat as confidential and privileged all information acquired by the Board in the course of the Enquiry."*

*It is in that context also that reference is made to your statement, that access to the Enquiry is made convenient, available and that Respondents are fully protected.*

*The Board with respect to those persons who wish to appear before the Board, will interview those persons at a suitable location (to be advised). The proceedings will be recorded, and of a course a transcript made available when typed.*

*With respect to the amended indemnity provided, this is not a matter for the Board, because it is the diocese which gives the indemnity. The Board understands from the Archbishop's office that the amendments to the indemnity are being considered, and the result of this will be made known shortly. Similarly with respect to the undertakings of confidentiality.*

*Reference is now made to your letter of 19 March 2003. You state:*

*"As you would expect in matters such as this Brave Hearts generally and in this case its directors specifically are most definitely "constrained by obligations of confidentiality" which will negate our ability to identify persons who have trusted us with their information, their thoughts and/or their pain."*

*That is accepted and understood, and the steps previously proposed are consonant with ensuring that confidentiality is maintained.*

*"We have found that many have already done so in the negative. Based on their perception of a lack of integrity and genuineness in the request by virtue of the Enquiry's failure to contact them personally in the early stages of this Enquiry, and/or after undertaking a potential risk benefit assessment to other victims and families in doing so (a fear the Church is gathering defence material as ammunition against potential future litigants) and/or on their own personal ability and residual emotional strength to do so and/or based on what is generally a lack of remnant trust in the institution of the Church and/or a fear of defamation proceedings potentially being raised against them."*

*It is stressed that the Board is quite independent of its appointor, just in the same way as a Royal Commissioner or Board of Enquiry appointed by a government is independent thereof. It is untenable to suggest that this Board is "gathering defence material as ammunition against potential future litigants". It is defamatory of the Board members to attribute to them a deceitful and ulterior motive in complying with the Terms of Reference.*

*It is difficult to see why the Board should be criticised for failing to contact persons, when, as was the fact, those persons were not known to the Board.*

*“We ask that a firm commitment be made and that a full and complete copy of your final Report be provided to this Senate Enquiry on a confidential basis for their further deliberation.”*

*It has always been understood and intended that the bulk of the Report would be made public. The Terms of Reference are forwarded herewith and particular attention is drawn to the following paragraphs:*

*“The proceedings of the Board shall be conducted in private and the Board shall treat as confidential and privileged all information acquired by the Board in the course of the Enquiry provided that the Archbishop may publish the whole or such parts of the Report as the Archbishop considers appropriate.” (Emphasis supplied)*

*“9. The Board will report to the Archbishop and will recommend whether the whole or parts of a Report may appropriately be made public, provided that any Report or parts of a Report (if any) marked “confidential” shall not be published.”*

*The Board anticipates that it will recommend to the Archbishop that almost all of the Report be made public. If there are parts of the Report marked “confidential” an explanation as to why this is so will be given, consistently with maintaining confidentiality.*

*The Board is aware that the Archbishop is anxious that as much of the Report as possible be published, and as stated that will almost certainly be the fact. Consequently the Report will be available to the Senate in any event. No doubt as a matter of courtesy a copy of the Report can be sent to the Senate, but it should be appreciated that the Report will be dealing with matters additional to those concerning schools and children. Consequently a deal of the Report will not be relevant to the Senate enquiry.*

*“We believe it is imperative that this Enquiry publicly address the apparent lack of proactive motivation it has exhibited in seeking out and speaking to people who could potentially offer useful background information.”*

*With respect it is difficult to see what else the Board could have done to seek out people “who could potentially offer useful background information” than what has occurred to date. The Board was appointed in a blaze of publicity, and it was made clear that if anyone wanted to contact the Board they could do so. So far*

*as the Board was concerned it was provided with the files of the complaints which had been made by the diocese of Brisbane. It wrote to the persons involved in those complaints and referred to in the files. This has resulted in the Board being provided with a great deal of relevant material. In press reports there was an assertion that some key witnesses want to give evidence to the Board but could not. In February, the Board wrote to the Courier Mail requesting that (their reporter) should "advise the Board of people who wish to give evidence or make submissions to the Enquiry".*

*(The Reporter) replied that:*

*"My editor has asked me to reply that it would be inappropriate for me to advise the Board of people who wished to give evidence or make submissions to the Enquiry."*

*It is noted that no reason was given as to why this would be inappropriate.*

*The reason for the publication of the notice on the date it was published, was because of the spate of media reports which had immediately preceded this. Public notices were placed in all relevant newspapers and there were some reports in respect of the notices. There has been no response to those notices.*

*The reason for the extension of time from 21 March was the belated response from some Respondents, and a foreshadowed application by Solicitors for a party for leave to cross examine. Since then the Solicitors have indicated they do not wish to cross examine.*

*Finally, it would be of assistance to the Board to know as soon as possible the number of persons who are likely to appear before the Board and desirably, though this is a matter for the persons concerned, the provision of written information prior to their appearing.*

*It would also be helpful if you could indicate in respect of the persons, of whom you are aware wish to give information or make submission to the Board, the particular complaint or complaints in respect of which that information or submissions will be made.*

*You will be advised shortly as to the location of the hearing."*

8.8 On 3 April the Board advised Ms Johnston that a meeting place had been arranged in Brisbane on 9 April but that a reply would be needed shortly so that notification could be made in an acceptable way.

8.9 On 4 April Ms Johnston wrote:

*“For now I can tell you that our legal advice is that we do not speak to your Enquiry due to issues of the lack of strength in the indemnity offer. I have passed our lawyers/barristers’ concerns to the other three who were to speak and they too have withdrawn. As a result, I have not then attempted to contact any others who may have likewise been involved.*

*It is a shame that what we consider appropriate legal protection for these people was not afforded by the diocese.”*

8.10 On 8 April the Board wrote:

*“I have your e-mail of 4 April and note its contents. I very much regret that it was thought necessary to have a fuller indemnity than the one previously provided. Allied with the preparedness of the Board to give an undertaking of confidentiality, I would have thought that there should have been no concern.*

*I invite you to provide as much information as you can, anonymously, that is without identifying the sources of your information, but perhaps identifying them as person one, person two and so on. In that way some appreciation can be had of what is the essence of the information which would have been provided by those persons concerned and the matter can be appropriately addressed. I have cancelled the hearing room booked for Wednesday 9 April.”*

8.11 Ms Johnston wrote:

*“We must decline your invitation to provide information to the Enquiry. As we have already informed you our legal advice based on the indemnity offered is that we should not participate and as such we will not be ignoring that sound advice and proceeding to provide material to the Enquiry.*

*We too regret we are no longer in a position, based on the refusal to offer the required indemnity and confidentiality required, to encourage those with relevant information to come forward. Clearly there are potentially dangerous ramifications for them and us in doing so.”*

8.12 On 11 April 2003 Ms Johnston wrote:

*“Further to my previous correspondence of 10<sup>th</sup> April 2003, we feel it appropriate you be made aware of some of the details of the legal advise provided us in relation to the Indemnity being offered by the Enquiry to those expressing interest in participating in the Enquiry.*

*In short, this is an example of our advise:*

- *The indemnity offered is weak;*
- *The indemnifier is not identified;*
- *The indemnity is limited to “costs of defending defamation proceedings”. The indemnity should be broader;*
- *There is no definition of the inquiry;*
- *Indemnity does not extend to documents given by you to or published in connection with, the inquiry;*
- *The exclusions are too broad. I can appreciate an exclusion where there is malice or reckless disregard for the truth;*
- *The degree of co-operation required for a defence of any claim is too high. Only relevant documents should be disclosed and the co-operation should be limited to what is reasonable;*
- *Who decides whether or not you have failed to meet the above standards - resulting in the withdrawal of the indemnity?*

*We would like to point out that we have received legal advise from two different and highly reputable sources, one a Barrister and the other, above, a prestigious legal firm. It was based on this advise that the revised Indemnity was drafted, including the addition of a Confidentiality Agreement. You can judge for yourself, based on the revisions proposed, the balance of advice we received. You would also be aware that our concerns are not unique and that, as we understand it, other potential witnesses who sought legal advice independently received a similar response from different Queensland lawyers.*

*Your communication contends there ‘should be no concern’ with the Indemnity offered because there is no threat past that of defamation and as such, a fuller Indemnity is not necessary particularly when combined with the preparedness of the Board to give an undertaking of confidentiality. We disagree of course but, even if this is true, why not grant the further Indemnity in any event in an effort to hopefully improve the likely outcome and findings of the Enquiry?*

*We believe it is not an unreasonable view that to trust the Church in these matters would be a mistake. It is just this scenario which*

*was the instigator to this Enquiry – when the then Archbishop hid behind legal advise in an attempt to legitimise his failure to act in both the best interests of the children, and the teachings of his religion. He chose to defend the money rather than the children and he did so, according to him, because of legal advise. You cannot seriously expect anyone to now trust the Church and its legal advisors, who ultimately, have commissioned this Enquiry and to whom the Enquiry will report, to put the Churches moral imperatives before its legal and financial ones.*

*The straightjacket that will strangle this inquiry is the making of the legal advise to the Church, which we note, is supported by Mr O’Callaghan. Those that sit on the Enquiry must deal with that. Predominantly, those of us who have a choice, have chosen not to trust.*

*For the record, we stand by our view that it is regretful that these matters could not have been dealt with earlier and that the Enquiry did not proactively and genuinely seek input from the public at the outset of its work. Testament to this perceived lack of willingness to speak to those who may be able to offer some input, is the scenario which has developed. It is our understanding that the current delay in finalising this Enquiry is associated with the late appearance, just before the Enquiry was due to report last time (after already having been granted one extension), of the Complainant. It is our understanding that the Complainant has been very clear about her desire to speak with the Enquiry from the outset and yet was not called upon to do so until just prior to the previous reporting date – hence the extension. Had it not been delayed until so late, the current extension would probably not have been unnecessary.*

*In any event, we wish you well with your Enquiry and hope you are able to overcome the barriers presented to you by virtue of a holding a private inquiry. For our part, we will continue to lobby for a Royal Commission and in the meantime, support the Senate Inquiry currently under way.”*

## **Comments on Objections to the Diocesan Indemnity**

The Board comments on the objections to the Indemnity as follows:

9.1 The advice given to Brave Hearts was exemplified by a series of propositions.

- *“The indemnity offered is weak”.*

- (a) So far as defamation is concerned the following appears a sound indemnity paragraph:

*“The diocese will indemnify you against costs of defending defamation proceedings arising out of evidence given to the Enquiry, and the amount of any judgment save where you-*

- (a) were actuated by ill-will or other improper motive or*
- (b) believed the defamatory matter to be untrue or*
- (c) acted unfairly in publishing it.”*

- *“The indemnifier is not identified”.*

9.2 That cannot be a serious objection. The Diocese is clearly the Corporation of the Synod of the Diocese of Brisbane, and in the unlikely event of it being argued that the indemnifier is not identified, abundant evidence to establish that fact could be called.

- *“The indemnity is limited to “costs of defending defamation proceedings. The indemnity should be broader.”*

The indemnity is not so limited, it also indemnifies against “the amount of any judgment”.

- *“There is no definition of the Enquiry.”*

The same comments apply as those that refer to the indemnifier not being identified.

- *“Indemnity does not extend to documents given by you to or published in connection with the Enquiry.”*

The giving of evidence to the Enquiry includes the provision of documents. Evidence can be oral or documentary. This objection is without substance.

- *“The exclusions are too broad. I can appreciate an exclusion where there is malice or reckless disregard for the truth.”*



It is difficult to understand this. Ill will or other improper motive would include malice.

- *“The degree of co-operation required for a defence of any claim is too high. Only relevant documents should be disclosed and the co-operation should be limited to what is reasonable.”*

This is untenable. The clause complained of is a typical subrogation clause appearing in myriad contracts of insurance.

- “Who decides whether or not you have failed to meet the above standards resulting in the withdrawal of the indemnity.”

The indemnity provides that the Diocese shall in conducting a defence act in good faith, and similarly so would it be implied that the Diocese must act reasonably and in good faith, if it sought to withdraw an indemnity. If the Diocese capriciously refused to indemnify there would be obvious remedies.

There appears to be little substance in the objections stated.

10. The Board was and remains most concerned to provide any person who wishes to provide information and comment with the opportunity to do so.

## **Summary of the Essential Findings of the Board**

### **11.1 Complaint No. 1 – The complaints against Kevin Guy deceased**

The Board finds that this complaint was not handled fairly, reasonably and appropriately because of the failure of the diocese and its employees to take reasonable care of students referred to as AB and CD, and other students at the school. The verdict of the jury awarding AB approximately \$800,000.00 damages, records a serious criticism of the school's

management care for the boarders entrusted to the school's custody and control.

11.2 The Board finds that the Head Master and the School Council, failed to give sufficient credence to the complaints of students AB and CD, with the result that AB and CD were left for a decade with the perception that their complaints were not believed, or at best, were viewed with considerable doubt. Allied to this was the refusal of the School Council to pay the costs of counselling incurred by the parents of students CD and AB. The parents of the two girls were naturally angered and distressed by the failure of the School Authorities to protect their daughters from Guy's depredations, but also by the failure of the Head Master and the School Council to acknowledge the abuse had occurred and apologising for the fact of it having occurred, even if that were done without admitting liability. As the parents have said, had that occurred, it may have concluded the matter.

11.3 The Board accepts that the Head Master and the School Council were constrained by legal advice that to make apologies and/or to assume the costs of counselling might constitute an admission of liability and/or void the relevant insurance policy. Whilst accepting this, the Board considers that such constraints were too readily accepted, and an alternative approach should have at least been explored.

11.4 The Board does not consider that Dr Hollingworth's role in respect of the Toowoomba Preparatory School claims should be criticised. As appears in the detailed Report , Dr Hollingworth was entitled to assume, on the basis of what he was told, and because the day to day management of the school was in the hands of the Head Master and the School Council, that the matter was being properly and adequately handled. It was in that belief, that Dr Hollingworth wrote to the parents of the children concerned, and other concerned persons, and to the extent that these letters were conservatively expressed, this reflected the aforesaid constraints imposed by legal advice.

#### **Complaint No. 2 – Complaints in respect of Kevin Lynch deceased**

12.1 Kevin Lynch was the school counsellor of St Paul's. He had previously been a counsellor at Brisbane Grammar School where he had sexually abused scores of students. When he was employed by St Paul's, there was no apparent suspicion of this, and had enquiries been made of the Grammar School, nothing untoward may have been revealed. Over several years at St Paul's Lynch exploited his position as counsellor to boys sent to him for counselling and assistance in what must now be seen as a cruel irony.

12.2 In 1993, Student 1 left St Paul's. In 1996, he reported to police that he left school in the year that he was frequently sexually abused by Lynch. Having taken a record of interview from student 1, he agreed to be "wired up", and meet with Lynch, which he did. During that conversation Lynch

said, *“You realised I could have got seven years jail for it. You realise it’s a criminal offence of a major nature”*.

- 12.3 On 22 January 1997 the police charged Lynch with unlawfully and indecently dealing with a minor (1 count), unlawfully procuring a minor to commit an indecent act (6 counts), and aggravated assault (1 count). Lynch suicided the following day. The Headmaster Mr Gilbert Case considered the Student’s complaint was vexatious, vindictive and entirely without foundation because he was aware of the troubled school history of Student 1. The Board considers there was no justification for Mr Case’s view.
- 12.4 On 29 January 1997 there was held in the school chapel a public funeral service, which was a “Requiem Mass” with four concelebratory priests, including the school chaplain. Whilst this was not planned by the School Authorities in the three eulogies which were given, Lynch was unreservedly praised and was described by one eulogist as “quite simply the most complete and skilful school counsellor that I have known in forth years of teaching”.
- 12.5 Wittingly or unwittingly the true facts were concealed from the public generally and students and parents in particular. Rightly or wrongly, this was seen as a cover-up. Referring to the memorial service for Lynch at the school, Mr. Andrew Knox, the Chairman of the School Council recently stated:

*“In hindsight with the benefit of current knowledge, it is a matter of great regret to me that this service was held and conducted as it was. It can only have inadvertently caused further hurt and distress to a number of our students.”*

- 12.6 Nothing was done by the School Council between January and April 1997 to further investigate the complaint of student 1. This may have reflected the acceptance by the School Council of the strong views of the Head Master that student 1’s complaint was baseless.
- 12.7 In April 1997 three further students came forward and complained that they had been sexually abused by Lynch. From that time on, and notwithstanding that there were considerable delays in others coming forward, and in the resolution of the claims, the Board considers that the complaints thereafter were handled fairly, reasonably and appropriately save for the failure to have made a prompt public statement and apology.
- 12.8 The Board finds that the complaints in respect of Kevin Lynch deceased were not handled fairly, reasonably and appropriately in the following respects:
- (i) The failure of the school authorities to take reasonable care of students at the school, which is reflected in the assumption made by the diocese and its lawyers that it was more likely than not that a jury would find that the diocese and its employees were negligent, and that there was a significant risk of an award of exemplary damages at least in the case of some students. This assumption was

tantamount to a verdict of a jury finding that the diocese and its employees had been negligent.

- (ii) The Head Master erroneously and untenably considered that the complaint of student 1 was vexatious, vindictive and entirely without foundation. This resulted in no investigation or other steps being taken for a period of approximately three months. It was unfair to student 1 to so unjustifiably dismiss his complaint, particularly in the light of it having been accepted by the police in the sense that they had charged Lynch who subsequently suicided.
- (iii) Whilst this was unplanned, the public funeral memorial service in which Lynch was eulogised in generous terms, constituted a failure to handle the complaint fairly, because of the hurt and concern that an abused student, hearing or learning of that service, would feel.
- (iv) The failure to make a prompt public statement and an apology to the effect that:
  - (a) there had been sexual abuse by a teacher of a student or students;
  - (b) the school authorities were aghast and angered at this discovery;
  - (c) the teacher had been charged by the police and subsequently suicided;
  - (d) a thorough investigation is being made to ensure the full extent of what has occurred is known;

- (e) the school apologises to the students who have been the victims of this unsuspected evil conduct, for the hurt they have suffered, and they can be assured the school will give them every support and assistance.

12.9 In the context of settlement the Board recognises that no matter how considerately the complaints are dealt with, how efficient and adequate the provision of counselling, how full the apologies given in respect of the abuse, and however adequate the amount of compensation awarded, this cannot eradicate the hurt and effect which the sexual abuse has had upon the lives and development of these young students.

12.10 Likewise even though the settlement negotiations were conducted in a fair and proper manner by the lawyers on both sides and the representatives of the diocese, and through the process of mediation avoided Court hearings, the very process of litigation, or any alternative method of resolving the dispute carries its own particular strains and pressures upon the victim, because of the irreparable effects of the sexual abuse.

12.11 In the case of St Paul's, from about April 1997 the handling of the complaints was predominantly controlled by the General Manager of the diocese, the lawyers for the diocese and later, the litigation sub-committee. This was a matter of some concern and frustration to members of the School Council, who would have preferred that more forthright public statements about the abuse had been made. In

retrospect, this undoubtedly would have been the better course to follow, but it seems that the aforesaid legal considerations resulted in this not being done.

12.12 Whilst Dr Hollingworth was kept aware of the facts of the complaints, and that they were being handled in the manner stated, he took no active part in the handling of the complaints. The Board makes no criticism of Dr Hollingworth in relation to the handling of the claims in respect of St Paul's.

### **Basis of Settlement**

12.13 Twenty-six claims were settled and the assumption on which they were was that a jury would find it more likely than not that they were negligent and that there was a significant risk of an award of exemplary damages at least in the case of two students. Those two students claim that they were very upset to learn that Lynch had disclosed their personal details, that is, the size of their penises. Together, they confronted him with this. In some sort of a fracas that followed, Lynch was pinned against the wall by a table. Such was his confidence in the support of the Head Master, Mr. Case that he sent the boys to him with a complaint about their aggressive behaviour, omitting to mention the cause of the fracas. The students claim that they told Mr Case that they were angry because Lynch had disclosed private matters, namely the size of their penises. They alleged that Mr. Case dismissed their complaints and punished them.



Later, one of the two students, along with another student, alleged that he went to Case and complained of sexual abuse by Lynch but was again dismissed. Mr. Case agrees that he punished the students but he has no recollection of anything being said which indicated to him that sexual abuse was involved. Mr. Case also has no recollection of the two students visiting him shortly after the occasion when they complained about Lynch's breaches of confidence.

### **Complaint No. 3**

13.1 This Complainant, was resident in a hostel conducted by the Anglican Church at Forbes between 1954 and 1956, and from which she attended High School. The Respondent was the Assistant Priest in the parish of Forbes and Warden of the hostel, assisted by his wife. The Complainant alleges sexual intercourse first occurred when she was fifteen and continued for a period of eighteen months. Sexual intercourse with a girl under the age of sixteen years was a criminal offence, provided that no prosecution could be commenced after the expiration of twelve months from the time of the alleged offence. By the time the Respondent expelled the Complainant from the hostel on what the Complainant said were spurious grounds, no prosecution against the Respondent could be commenced.

- 13.2 The Complainant believed that the Respondent would, in due course , leave his wife and come to her, but when she heard that his wife was pregnant she abandoned that hope and married. This was a most unhappy marriage and ultimately “after many years” she sought help from the Respondent and the sexual relationship resumed. This continued until the Respondent went to England in 1978. Despite the fact that he was married, the Respondent frequently wrote to the Complainant assuring her of his love, asking her repeatedly to be patient with assurances that he wanted them to be together.
- 13.3 In 1984 the Respondent gave notice of his intention to resign as Bishop. He then left his wife and lived with the Complainant at Wagga for a period of twelve days. Bishop Hurford, then Dean Hurford, at the behest of the Respondent’s wife went to Wagga and returned the Respondent to his family. The Respondent’s resignation as Bishop took effect in June 1985.
- 13.4 In 1993 the Respondent agreed that he would go to live with the Complainant in a home which she had purchased in Goolwa, South Australia. The Complainant went overseas and returned after twelve months, expecting the Respondent to join her in Goolwa. In 1994 the Respondent declined saying that “he was too old for her”. There has been no further relationship.
- 13.5 In 1995 the Complainant wrote to Bishop Williams and other Bishops complaining of the Respondent’s conduct and concluding:

*“Donald’s despicable behaviour has hurt me profoundly, it has damaged my sense of worth – had a devastating effect on my life – choice of partners and relationships and the repercussions continue.*

*It’s time for this to be resolved with justice, and in as much as it can be to my satisfaction – with compassion and kindness from the Church . . .”*

- 13.6 The matter was referred to Dr Hollingworth and in conjunction with other diocesan officials it was arranged that there would be a mediation in Brisbane on 4 December 1995. The mediation was attended by the Complainant and her support person, the Respondent and his support person, and some other persons including Dr Hollingworth as an observer.
- 13.7 The Complainant sought to have the Respondent sign a letter which she had prepared and addressed to her deceased parents. In that letter there was a description of the relationship between the Complainant and the Respondent, and an apology to the parents. The Respondent declined to sign that letter, or to make any other apology to the Complainant.
- 13.8 In December, the Complainant wrote to Dr Hollingworth claiming, for the first time, compensation and seeking the immediate de-registration of the Respondent.

Dr Hollingworth replied to that letter stating, inter alia:

*“There are a number of matters which I feel duty bound to advise you and the first is that having listened and absorbed the stories of both yourself and Donald Shearman and his wife, there is a very wide discrepancy in your respective collection of events and their outcome.*

*I feel I should mention this because some of the information coming forward may not be easily substantiated as evidence either way, especially now, because there are very few witnesses available or for that matter alive.”*

13.9 This letter was perceived by the Complainant as Dr Hollingworth calling her a liar. This deterred the Complainant from taking any further action until 2001. In that year she sought to obtain a copy of the protocol so as to bring a complaint pursuant to the protocols applicable in the diocese of Brisbane. Considerable delay attended her endeavours to obtain the protocol. She was also informed that because the mediation had been held and failed, there was nothing further she could do. If the Complainant had a complaint that could be dealt with by the Committee for Complaints of Sexual Abuse, this was not correct. However because the events of which the Complainant complains occurred in another diocese, there may be jurisdictional problems in her bringing complaints before the CCSA or the Tribunal.

13.10 The Respondent, a retired Bishop, had permission to officiate in the Brisbane diocese. The Complainant asked that this be taken from the Respondent. Dr Hollingworth considered that request and for reasons that appear in the detailed Report, he declined to do so. Whether that decision was correct is a matter upon which the Chairman and Professor Briggs are unable to agree. On balance and notwithstanding the powerful arguments to the contrary, the Chairman considered that in all the circumstances this was a reasonable exercise of Dr Hollingworth's discretion. Professor Briggs on the other hand considers that once Dr

Hollingworth in his capacity as Archbishop was apprised of the serious misconduct of the Respondent, he should in order to demonstrate proper moral leadership, have withdrawn the permission. Professor Briggs considers that in the circumstances Dr Hollingworth's failure to do so was inappropriate.

13.11 At no time has the Respondent apologised to the Complainant, and the Board considers that this is an unfavourable aspect of the handling of the complaint. It has been submitted by the Solicitors for the Respondent that the Board should pay no regard to the Respondent's failure to apologise. It has been submitted by the Solicitors for Dr Hollingworth whether the failure to do so relates to the 'handling' of the complaint to which the Board's terms of reference are directed. "This is because neither the Church nor anyone else, including Dr Hollingworth, could compel Mr Shearman to apologise." The Board considers that the failure to apologise is all part of the process of handling the complaint, and has had regard to it.

13.12 The Board considers that whilst recognising the stated inability of Dr Hollingworth to apologise on behalf of other dioceses, this should not have precluded him from conveying to the Complainant that he utterly disapproved of the Respondent's conduct and that she was entitled to an apology from the latter.

13.13 The Board submitted to the Respondent and Dr Hollingworth's Solicitors

draft conclusions as follows:

- *"The Board finds that the subject complaint was not handled fairly, reasonably and appropriately in that there was and remains a failure on the part of the Respondent to make a full and unconditional apology for his conduct towards the Complainant, namely his seduction of the Complainant at Forbes, her dismissal on spurious grounds from the Forbes Hostel, the premature termination of her secondary education, the lost opportunity for tertiary education, his subsequent adulterous relationships with the Complainant, accompanied by promises, (ultimately repudiated) that he would live permanently with her, and the consequent hurt and distress over many years."*

In that context it is noted that in their responses on behalf of Dr

Hollingworth his Solicitors write:

- *"Certainly, if Mr Shearman did what the Complainant alleges, an apology from him would be warranted. Further based on Dr Hollingworth's understanding of what has been admitted by Mr Shearman in his discussions with Dr Hollingworth, Dr Hollingworth would regard an apology as warranted."*
- *With respect to the diocesan officials and Dr Hollingworth, the Board considers the efforts to resolve the dispute by mediation were appropriate and reasonable. However, the mediation failed and the Complainant was told that nothing more could be done. Accepting that this may be so because of jurisdictional problems, the Board considers that, whilst recognising the stated inability of Dr Hollingworth to apologise on behalf of other dioceses, this should not have precluded him from conveying to the Complainant, that he utterly disapproved of the Respondent's conduct and that she was entitled to an apology from the latter. The letters of 15 February 1996 and 10 April 2001 contain no such message but rather imply that the Complainant was acting unreasonably, in not treating the matter at an end because of the failure of the mediation. The Board considers this was inappropriate and unfair to the Complainant."*

13.14 As appears in the detailed Report, the Solicitors for the Respondent and

the Solicitors for Dr Hollingworth submitted that above findings should not

be made because in the case of the Respondent's Solicitors for the

reasons referred to above, and in the case of Dr Hollingworth, because he was constrained by legal advice in making any acknowledgement of disapproval or apology to the Respondent.

13.15 Notwithstanding that this may have been a factor in Dr Hollingworth's considerations, the Board considers that there must have been a way in which Dr Hollingworth could have provided some compassionate recognition of the wrong which the Complainant had suffered. It seems incongruous on the one hand that Dr Hollingworth pointed to the contrition of the Respondent and a penitent heart, which constitutes the recognition that the allegations were true, yet whilst he was Archbishop made to the Complainant no statements of disapproval of the Respondent's conduct.

13.16 Very recently, the Board discovered that in March 2002 Dr Hollingworth apologised to the Respondent. Neither the Complainant nor Dr Hollingworth's Solicitors had previously referred to this. The apology was in the following form:

*"Further to our telephone conversation of today I am writing to set out the terms of the unreserved apology I delivered to you orally. What happened to you as a girl at the hostel was wrong and you were in no way responsible for it. I am deeply sorry for the words I used on Australian Story that suggested otherwise. I cannot try to explain or excuse them. All that matters to me now is that you should be aware of how sorry I am. There is little now that I can do but to express once again my apology and my regret for all that you have been through in the past and in the present. I cannot change the past but if I could I wish most of all is that you had never had to suffer the pain and anguish associated with things that have happened to you over the years. I confirm my willingness to meet with you and you may contact my Secretary."*

- 13.17 The significance of that apology is first that it is a full and appropriate apology from the former Archbishop; secondly it was made in March 2002, albeit that the reasons given for a previous failure to apologise or express disapproval of Mr Shearman's actions, were legal constraints.
- 13.18 There is reference in the detailed Report to a meeting which the Complainant, the Respondent and his wife had with Archbishop Grindrod in 1984. The Complainant says that this was at a time when it was contemplated and intended that the Respondent would resume living with her, whereas it is contended by Dr Hollingworth's Solicitors that the meeting was for the purpose of preserving the Shearman marriage.
- 13.19 It was put by Dr Hollingworth's Solicitors that the Complainant had withdrawn from a process of mediation with the diocese of Bathurst, which was the diocese in which the hostel was situated. However, that does not appear to be the case because, as appears in the detailed report, the Complainant, through her Solicitors, has been endeavouring to obtain a response from the Bathurst diocese without success.

#### **Complaint No 4**

- 14.1 This complaint made by the Complainant against the Precentor of the Brisbane Cathedral, then the Reverend Ross McAuley, was of sexual harassment.



- 14.2 The complaint was the first dealt with in 1997 by the recently formed CCSA, the Chairperson of which was Ms Marilyn Redlich.
- 14.3 The committee appointed investigators who interviewed the Complainant and the Respondent, A mediation was held, and then suspended because of the raising of an additional issue which was a commercial dispute between the parties.
- 14.4 A further mediation was held and an agreement entered into which, notwithstanding that the mediation had succeeded in that sense, was contemplated in the agreement that the CCSA would report to the Archbishop, and that the Archbishop would take such action as was appropriate to dispose of the complaint.
- 14.5 The report of the committee made to the CCSA was not provided to the Complainant or the Respondent. The report contains a number of findings and recommendations, which for reasons given in the detailed Report, have not been included here.
- 14.6 Dr Hollingworth considered the recommendations, and was of the view that they did not warrant the taking of action. However, it was apparently contemplated by Dr Hollingworth that because of funding constraints, the period in which the Reverend McAuley would continue to be Precentor was limited. This was at the end of 1997, and Dr Hollingworth interviewed both the Complainant and the Respondent.

- 14.7 Some two years later, after Mr McAuley had left the Anglican Church to join the Catholic Church, Dr Hollingworth provided a reference in which he referred to the complaint and the way in which it was handled. Ms Redlich and the Complainant are critical of some aspects of what appeared in the reference, but this was long after the handling of the particular complaint had been resolved.
- 14.8 The Complainant has criticised Dr Hollingworth saying that he was told things “to shut him up”. Dr Hollingworth disputes this and some other criticisms made by the Complainant, but agrees with others.
- 14.9 So far as the Board is concerned, it takes the view that Dr Hollingworth was as Ms Redlich acknowledged, required and entitled to deal with the report of the committee as he saw fit. Whilst Ms Redlich is critical of the way in which this was done, the Board is of the view that Dr Hollingworth bona fide considered the recommendations, and in his role as Archbishop made a decision which was reasonably open for him to make.
- 14.10 Therefore the Board finds that the handling of this particular complaint was in all the circumstances, fair, reasonable and appropriate.

### **Complaint No 5 FG**

- 15.1 Between 1978 and 1981 the Complainant (referred to as FG) was sexually abused by John Elliot who was then the Bursar of the Anglican

Grammar School, and a leader of the CEBS in the Complainant's parish. Elliot abused the Complainant over a period of four years, the abuse taking place in the parish and at the school, which, having been abused, FG reluctantly attended in 1981.

- 15.2 As part of the selection process for the priesthood, the Respondent was interviewed by a psychiatrist, Dr. Slaughter. During the assessment, he failed to reveal that he had ever engaged in any sexual misconduct. Had he done so, his application would have been rejected. In fact additional to the abuse of the Complainant, his brother and other persons in the Dalby parish, the Respondent had also engaged in the protracted sexual abuse of boys some years previously in another town. In 2002 he pleaded guilty to a number of counts including ten counts of sodomy and was sentenced to a substantial period of imprisonment which he is still serving. These matters were unknown to the Diocese until August 2001.
- 15.3 Also on 14 February 2003 the Respondent pleaded guilty to abusing the Complainant and for this his jail sentence was increased by six months.
- 15.4 The complainant was unaware that the Respondent had joined the priesthood until he found him at his family home. After disclosing the abuse to his parents, they informed Bishop John Noble, who was a family friend and a past parish priest of Dalby. Bishop Noble informed Dr Hollingworth, who interviewed Elliot who confessed to the offences.

- 15.5 Dr Hollingworth referred Elliot to Dr Slaughter for assessment, and following discussions with Dr Slaughter, and with Bishops Wood and Noble, Dr Hollingworth decided to continue Elliot in the ministry. He did so after imposing certain undertakings and supervisory conditions, such as that he must avoid situations involving children and young people and be supervised by his wife. Dr Hollingworth believed this would minimise the risk of any recurrence of sexual misconduct.
- 15.6 Dr Hollingworth, through his Solicitors, has contended that he based that decision upon his understanding that the sexual abuse was an isolated occurrence.
- 15.7 The Complainant on the other hand contends that he told Dr Hollingworth the details of the abuse, and that it involved repeated criminal acts. Whilst the Complainant did not specify the period over which the abuse took place, he says that nothing he said could possibly have justified a belief that the abuse was one isolated incident.
- 15.8 The Board is satisfied that Dr Hollingworth was told by the Complainant on 30 August 1993 that the sexual abuse was not an isolated occurrence but consisted of repeated criminal acts. Dr Hollingworth's memory has been demonstrated to be faulty in that initially, he did not link up the Complainant with Elliot when he saw him on 30 August 1993. The Board finds that Dr Hollingworth's recollections are faulty, and that he has apparently reconstructed what he believed he was told, rather than

recalled what in fact was said. Dr Hollingworth has made a statutory declaration that he believed at the relevant time the abuse was an isolated occurrence, and whilst the Board does not doubt he genuinely believes this to be so, the Board is satisfied that in August 1993 FG told him the details of the abuse and indicated that it consisted of more than one offence. There was nothing that could have entitled Dr. Hollingworth to believe otherwise. Further support for the reasons of the Board in this regard are detailed in the Report. However, even if the abuse had been an isolated incident, it would not follow that a decision to continue Elliot in the ministry was justified. The Board considers that no Bishop acting reasonably could have reached the decision to continue a known paedophile in the ministry. There were no extenuating circumstances nor can the Board imagine any that could have justified his continuance.

- 15.9 Dr Hollingworth's decision, whilst made in good faith, and in consultation, and without demur of the bishops whom he consulted, and in the belief that precautionary conditions imposed minimised the risk of recurrence, was untenable. Thus the Board finds that this complaint was not handled fairly, reasonably and appropriately.

### **Complaint No 6**

- 16.1 In this case, the Complainant lodged a complaint that the parish priest of a small country town had written letters of endearment to the Complainant's wife. Bishop Smith, as a Regional Bishop, investigated the complaint and reported to Dr Hollingworth. It was decided that the priest

should be asked to resign. The priest did resign, but unknown to Dr Hollingworth and Bishop Smith, did so with the intention of remaining in the town which he did before being appointed priest in another diocese.

- 16.2 The Respondent had left the town before the priest resigned, and subsequently his marriage broke down and there was a divorce. The Respondent has bitterly complained of both the way in which the complaint was handled, and of the conduct of the Complainant.
- 16.3 For reasons explained in the detailed Report, the Board deals only with the question of whether the obtaining of the resignation of the priest by Bishop Smith and Dr Hollingworth constituted a fair, reasonable and appropriate handling of the complaint of the Complainant. The Board has not enquired into the subsequent expansion of the complaint by the Complainant as to the relationship of the priest with his former wife, nor does the Board deal with counter accusations made by the priest against the Complainant.
- 16.4 In the obtaining of the resignation of the Respondent, the Board finds that the complaint was handled fairly, reasonably and appropriately.

### **Complaint No 7.**

- 17.1 This was a complaint by a woman who alleged that as a seventeen year old girl, she had been sexually abused by the Respondent who at that

time was a lecturer employed by a University and acting in the course of his employment with that University.

- 17.2 The Complainant complained to the University, the police and to the CCSA, as is set out in the detailed Report. Whilst the complaint was referred to the Board it was not dealt with nor was there any ruling on whether it was empowered to do so.
- 17.3 The Complainant met with Dr Hollingworth on three occasions, and the Board makes no criticism of Dr Hollingworth's role in this regard.
- 17.4 The Board, following the advice of the Chancellor, the Honourable Paul de Jersey AC, also the Chief Justice of the Supreme Court of Queensland considers that the CCSA has no jurisdiction to deal with the complaint, because albeit that the Respondent was a part time employee of the diocese, he had no pastoral relationship with the Complainant and at the time that the alleged abuse occurred, (albeit on some occasions in diocesan premises), the Respondent was acting in the course of his employment with the University, not the Diocese.
- 17.5 Whilst there has been some publicity previously given to this complaint, the Board considers that the Complainant and the Respondent should not be identified for reasons given in the detailed Report.
- In all the circumstances the Board does not make any further finding or comment, because of this lack of jurisdiction.

**Complaint No. 8**

- 18.1 This was a complaint made by the Complainant against the Reverend Ross McAuley (as he then was).
- 18.2 Professor Briggs had a telephonic conference with the Complainant who subsequently issued Court proceedings in relation to the subject of this complaint. In those circumstances, and for reasons which are explained in detail in the Report, the Board will not further enquire into this matter, because it is before the Court.
- 18.3 For the same reason the Board cannot consider or comment on the appointment of the Respondent, the Reverend Ross McAuley to the CCSA in 1997.

**Complaint No. 9 – Complainant v. Anon**

- 19.1 In this complaint the Respondent is not identified by name. The Complainant (whom the Board does not name) complained to Dr Hollingworth and to Dean Grimshaw, but it is not clear as to whether he was specifying that there had been an act of sexual abuse, alternatively if it had been that it was within the jurisdiction of the Church.



- 19.2 The Board does not consider that the role played by Dr Hollingworth and Dean Grimshaw was other than a fair, reasonable and appropriate handling of the complaint of the Complainant.
- 19.3 The Complainant makes some constructive comments upon the necessity for the setting up of appropriate bodies to deal with issues of sexual abuse.
- 19.4 It has also been pointed out that if in fact the Complainant has a complaint of sexual abuse against a voluntary church worker, the past and present Protocols would have jurisdiction to deal with such a complaint.

### **Recommendations for the Future**

- 20.1 It was an important term of the terms of reference that the Board would make recommendations in relation to:

- “(a) Any systemic administrative or operational changes which the Board considers would better enable the diocese to respond to any future complaints of sexual abuse or misconduct promptly, appropriately and effectively.*
- (b) The referral to other authorities or agencies such as, but not limited to, the Queensland Police Service, the Department of Families, any relevant SCAN units, the diocesan Committee of Complaints of Sexual Abuse (CCSA), any body within the diocese related to the subject matter of the Enquiry or any person or persons in positions of responsibility under the benefices avoidance Canon or any relevant Canon of the other church or diocese of such matter as the Board considers appropriate.”*

- 20.2 An obvious first step in deciding what recommendations are appropriate is to look at how the system has operated in the past. While the Board considers that protocols and child protection policies applicable to schools were either non-existent, or not applied, it is unnecessary to undertake a detailed analysis given that they are currently being replaced. Clearly, because of their different needs, there is a case for having separate protocols and policies for (a) the protection of children; (b) reports by adults who were abused as children and (c) adult victims.
- 20.3 Since the events of Toowoomba and the settlement of the St Paul cases, the Diocese under the administration of Archbishop Aspinall has embarked upon very significant reforms and extensions to existing protocols. Importantly "Protocol for Dealing with Complaints of Abuse" was approved by Diocesan Council 24 October 2002.
- 20.4 The Board believes that it is the adoption and the operation of those new protocols that deserve analysis and, where appropriate, constructive criticism. It is considered that it would be unhelpful for the Board to simply analyse and perhaps criticise the current Protocol. The Board recommends that there be a consultative process between Professor Briggs in particular and those in charge of the promulgation and administration of protocols and child protection policies so as to "fine tune" them.

- 20.5 With respect to the referral to other authorities, a matter which has been placed in prominence is the availability of co-operation and assistance from the police, when they deal with complaints of sexual abuse occurring for example in schools. As appears from the correspondence which the Queensland Police Division, in respect of the St Paul's complaints, there does appear to be a problem in the sense that there cannot be an immediate response to enquiries made but rather the making of applications under the Freedom of Information legislation, which necessarily takes time.
- 20.6 Once again, it would not be productive for the Board to criticise (if it was thought appropriate) the existing practices of the Queensland Police, governed as they may be by the provisions of relevant legislation. Instead the Board considers that the appropriate and best method of ensuring co-operation between the police and school authorities in the aftermath of the discovery of sexual abuse, its prosecution, and the need for remedial action, is for discussions to take place between the two bodies. The Board from its discussions with the Queensland Police division believes that it will be willing to discuss ways and means of establishing co-operation between school authorities and the police, when the latter are investigating and prosecuting cases of sexual abuse in school.
- 20.7 It is important there be a clearly defined relationship between the police and school authorities or any other Diocesan authority. Of course there can be no substitution for the police force in the context of investigating

and prosecuting, crimes of sexual abuse. The only way that perpetrators of sexual abuse can be brought to justice is through the machinery of those who investigate, prosecute and have the charges determined by relevant Courts. Anything which detracts from the efficiency of that process must be eschewed.

20.8 The recommendation of the Board is that there be an exchange between the relevant persons in authority in the Police department, and those representing the schools to investigate ways and means whereby the existing situation can be improved, so as to better detect and deal with the perpetrators of sexual abuse, and thereby assist the victims.

20.9 The Board believes that many of the problems for the Diocese and child sex abuse victims has been the lack of clear guidelines for reporting suspicions and reports of child sexual abuse. The Board wishes to emphasise that senior teachers and clerics are not usually trained or skilled to assess whether a child or young person has been sexually abused or whether a member of staff is innocent or guilty. The Board believes that it is vital that all suspicions and reports are referred to Police or the statutory child protection service for an independent investigation and assessment.

21.1 The Board sets out extracts from Archbishop Aspinall's address to the Synod of the Diocese of Brisbane on 22 June 2002. It does so because of their cogency and applicability to some of the issues which have

concerned the Board. In particular paragraphs 1 – 8 provide excellent guidelines for dealing with complaints of sexual abuse.

### **“SEXUAL ABUSE AND MISCONDUCT**

*Many of you have been distressed, as I have been, over reports of sexual abuse and misconduct in our church. Over the last six months there has been sustained, and at times intense, media scrutiny of allegations of abuse and of the church’s handling of those allegations. Many have become burdened and worn down by this experience. Some have judged the media treatment of the matter to have been excessive, even obsessive, and at times unfair. Most of us want to be able to put this difficult and demoralising period behind us and get on with the mission of God in the world.*

*But let us not jump too quickly to conclusions that may be mistaken and in the long term unhelpful. First of all we shouldn’t project all our distress and discomfort onto the media as if they were responsible for it. The media have an important role to play in our society not least in assisting to hold our institutions accountable to the whole community. Of course this role is undermined if sensationalism is allowed to override truth and fairness. But all social institutions, including the churches, must expect to be called to account when they have done the wrong thing. We can’t attack the messenger simply because we don’t like the message. Equally we may expect the messenger to take care and be responsible and socially constructive in communicating the message.*

*Secondly, we should not jump too quickly to the conclusion that dealing with this issue in the life of the church is a distraction from the mission of God in the world, an irritating hindrance to the real work. The church is called to make known the love of God in Christ for all people. This love is good news for the poor, freedom to those who are oppressed, liberty to those held captive. God’s special concern to protect the vulnerable and the defenseless is to shine through the life of the church. So if it ever comes about that the weak or vulnerable are harmed by the actions of the church it is a fundamental betrayal of the justice of God and the gospel of Christ. Dealing with this matter in the life of the church, justly and with care for the most vulnerable, goes to the heart of God’s mission. It is not a distraction from it.*

*And thirdly, if the events of recent months teach us anything it is to reinforce the fact that the damage caused by sexual abuse never just goes away. It may be pushed down and hidden for a time but it festers away and eventually resurfaces often with the damage multiplied and the agony intensified. We’ve seen this in the lives of victims of abuse where the damage goes on wreaking havoc for decades, destroying the life of the individual concerned and distorting close relationships. The damage*

*can even have impacts in successive generations. Many abusers have themselves been subjected to abuse. And what's true in the lives of individual victims is also true in the lives of institutions. In the church, abuse alleged to have occurred forty and fifty years ago is now resurfacing. We cannot simply say, "Leave it behind. It's all in the past. It happened a long time ago. Move on." The only way we can move on is if we face the hurtful reality of what has happened, extend care and support to those harmed and take steps to ensure as far as possible that it never happens again.*

*Let me then address each of these aspects.*

*At the end of 2001 a court case concerning sexual abuse by a teacher in one of our schools ten years earlier resulted in an award of some \$400,000 in compensatory damages and a further \$400,000 in exemplary damages. As I understand it, exemplary damages were awarded because the court found that the church consciously, and in an insulting way, disregarded the complainant's rights. The church's failures seem to have included the following:*

- 1. The church failed to pick up the early signs of offensive conduct and failed to take appropriate immediate action. Apparently there were some concerns raised about this teacher by a number of pupils and by a nursing sister but there was also a reluctance to accept that the culprit could possibly behave in the wrong way.*
- 2. The church failed to care properly for victims after the offensive conduct was known to have occurred. It seemed to place insurance, legal and financial concerns ahead of caring for victims. The church should have known that acknowledging wrong-doing is important in the healing process for victims.*
- 3. The church failed publicly to acknowledge offensive conduct, that is the church tried to keep the matter quiet, to cover it up. In one interview a parent gained the impression that the matter should be kept quiet so that the good name of the school would not be tarnished in any way.*
- 4. The church failed to communicate with parents of other children who may also have been at risk.*

*The outcome of this court case pulled us up short and has led to significant changes in the way we now deal with complaints of sexual abuse or misconduct. These principles are now guiding how we respond and either have been or are being set in place:*

- 1. All complaints are taken very seriously. Though they must be investigated carefully before any conclusion may be*

*reached, complaints are not to be dismissed out of hand as unbelievable.*

2. *We offer pastoral care and support to anyone who makes a complaint including professional counselling where that is appropriate. We do all we can to lessen harm by providing the best care possible.*
3. *We are as open, transparent and accountable as possible while respecting the rights of complainants and victims to privacy. The church will not require confidentiality clauses in agreements settling claims. However we will respect the rights of individuals to privacy.*
4. *Where allegations of abuse involve children we report those matters to the police.*
5. *Systems for detecting abuse throughout the church are to be rigorously maintained and continually improved. We invite any person who has been abused, no matter when, to come forward and make the matter known so that it can be addressed.*
6. *The rights of a person accused of wrong-doing are also protected and the presumption of innocence is retained.*
7. *Any person found to have abused children or to have engaged in serious sexual misconduct will not be permitted to continue to exercise a ministry which exposes vulnerable people to further harm.*

...

*The Diocesan Council has established a Litigation Committee to manage both litigation and mediation processes on behalf of the diocese. This will ensure that all claims are managed in accordance with the principles I have outlined, with attention to the needs and wishes of any victims and as expeditiously as possible. In some situations where it is the desire of complainants to settle matters without recourse to the courts we will do what we reasonably can in that direction. We recognise that prolonged adversarial hearings can be damaging in both victims and the church. However we will do nothing to impinge on the rights of any person to go to the police or to seek redress through the courts.*

## **Recommendations as to Publishing the Report**

22.1 The Board is required by Clause 9 of the Terms of Reference to

“recommend whether the whole or parts of a report may

appropriately be made public". The Board recommends that the whole of this Report be made public. Whether that be done is of course for the Archbishop to decide.

22.2 The Board has not marked any parts of the Report "Confidential". However, in the Report delivered to the Archbishop on 23 April, some of the Complainants were named. In order to ensure that all Complainants remain anonymous, there has been deleted the names of Complainants, and other persons, places and matters, which might lead to the identification of a Complainant. Additionally a number of typographical and formatting corrections have been made, but save as to that and the inclusion of this paragraph, this Report is the same as that delivered on 23 April 2003.

Dated the twenty-second day of April, 2003

Peter O'Callaghan Q.C.  
Chairman

Professor Freda Briggs  
Member



**TERMS OF REFERENCE**  
**FOR AN INDEPENDENT INQUIRY**  
**INTO PAST HANDLING OF ALLEGATIONS**  
**OF SEXUAL ABUSE OR MISCONDUCT**  
**IN THE ANGLICAN DIOCESE OF BRISBANE**

The Corporation of the Synod of the Diocese of Brisbane, responding to community concern at the way in which complaints of sexual abuse and misconduct have been handled in the past by persons in authority in the Anglican Church has, through solicitors engaged for this purpose, retained Mr Peter O’Callaghan QC (the “Chairman”) and Professor Freda Briggs to act as a Board of inquiry (the “Board”) to inquire into and report upon the handling of such complaints in accordance with the following Terms of Reference.

**Definitions**

- a) The “Church” means the Church known as and forming the branch of the Anglican Church of Australia in the Diocese of Brisbane and includes Church Institutions with the meaning of that expression in the Church Institutions Canon.
- b) The “Diocese” means the Diocese of Brisbane.
- c) “Archbishop” means the Archbishop of the Diocese of Brisbane.
- d) “Church Person” means any member of the clergy of the Anglican Church of Australia and religious and lay persons who are or were employed by or within the control of the Diocese.
- e) “Complaint” means a complaint or an assertion of sexual abuse or misconduct by a Church Person made on or before 31 December 2001 to a person in a position of responsibility in the Church (the “Person”).
- f) “Sexual abuse or misconduct” includes any form of criminal sexual assault, sexual harassment or other conduct of a sexual nature that is inconsistent with the public vows, integrity of the ministerial relationship, duties or professional responsibilities of a Church Person.

- g) “Complainant” means a person who has made a Complaint.
  - h) “The Person” means the person in a position of responsibility, to whom the Complaint was made and/or who handled that complaint.
  - i) “Past handling” means the way in which a Complaint was handled, and without limiting the generality of that expression includes the procedures followed, decision or decisions made, and action taken in relation to the Complaint.
  - j) “Ascertain” means to take all reasonable steps to establish the facts and circumstances necessary for the Board to discharge the duty to inquire and report.
1. The Board shall inquire into and report upon the Past Handling of the complaints against
    - (a) The Reverend Ross McAuley
    - (b) Kevin George Guy
    - (c) Kevin John Lynch
    - (d) The Right Reverend Donald Shearman
    - (e) The Reverend John Litton Elliot; and
    - (f) Such other Complaints as the Archbishop may refer to the Board.
  2. The Board shall agree upon and adopt such procedures with respect to the conduct of the inquiry as the Board considers will better facilitate a prompt, cost efficient, and comprehensive investigation into the matters the subject of the inquiry, Provided if the Board is unable to agree upon a particular aspect of the procedure the Board shall adopt the aspect decided by the Chairman. The procedures shall include taking all reasonable and necessary steps to,
    - 1) ascertain when, to whom, by whom, and by what means a Complaint was made.
    - 2) ascertain the particulars of the Complaint.
  3. For the purpose of ascertaining the matters referred to in paragraph 2,
    - 1) the Board shall be provided with all documentation in the control or custody of the Diocese, relating to the Complaint.

- 2) the Board is authorised and directed to seek relevant information from such Church Persons as the Board considers can assist with the carrying out of the inquiry and report.
  - 3) the Board may seek from the Complainant such information as the Board considers can assist the carrying out of the inquiry and report.
4. The Board shall jointly ascertain the procedures followed, the decisions made, and action taken by the Person in handling the complaint, Provided that in the event of the Board being unable to jointly agree upon the ascertainment of a particular matter, the Board will in respect of that matter adopt the ascertainment made by the Chairman.
5.
  - a) The Board shall report to the Archbishop whether in all the circumstances the procedures followed, the decisions made and action taken by the Person in handling the complaint were fair, reasonable and appropriate.
  - b) If the Board finds that any of the procedures followed, decisions made, and action taken were not fair, reasonable and appropriate, the Board shall report to the Archbishop the respects in which the past handling was not fair, reasonable and appropriate, and may make recommendations to the Archbishop as to the course of action now available to the Diocese to overcome or remedy errors in such past handling.
6. It is contemplated and intended that the reports and recommendations of the Board will be jointly made, Provided that if the Board is unable to jointly agree upon a particular aspect of a report or recommendation, each member may in respect of that aspect make a separate report or recommendation.
7. The Board may inform itself inter alia by,
  - (a) interviewing such persons as the Board considers may assist the Board in carrying out the inquiry and report.
  - (b) by conducting hearings at which the Complainant and the Person may be present and also if desired, their respective legal or other representative.

8. The proceedings of the Board shall be conducted in private and the Board shall treat as confidential and privileged all information acquired by the Board in the course of the inquiry provided that the Archbishop may publish the whole or such parts of the Report as the Archbishop considers is appropriate.
9. The Board will report to the Archbishop and will recommend whether the whole or parts of a report may appropriately be made public, provided that any report or parts of a report (if any) marked 'Confidential' shall not be published.
10. The Board may make recommendations in relation to,
  - a) any systemic administrative or operational changes which the Board considers would better enable the Diocese to respond to any future complaints of sexual abuse or misconduct promptly, appropriately and effectively.
  - b) the referral to other authorities or agencies such as, but not limited to, the Queensland Police Service, the Department of Families, any relevant SCAN Units, the Diocesan Committee of Complaints of Sexual Abuse (CCSA), any body within the Diocese related to the subject matter of the Inquiry or any person or persons in positions of responsibility under the Benefices Avoidance Canon or any relevant Canon of the Church or Diocese of such matter as the Board considers appropriate.
11. The Board may refuse to inquire into or to continue to inquire into any matter if the Board is of the opinion the matter is frivolous or vexatious or not sufficiently relevant to the matters the subject of the inquiry, so as to assist the Board in discharging the duty to inquire and report.
12. The Board will make a final report no later than 29 November 2002.

# **BOARD OF ENQUIRY**

**into past handling of Complaints  
of sexual abuse in the Anglican  
Diocese of Brisbane**

## **Report**

### **Complaint No. 1**

#### **Complaints of Students of Toowoomba Preparatory School against Kevin Guy dec'd**

- 1.1 The Toowoomba Preparatory School (the "School") is a boarding school and a day school for boys and girls between the ages of prep and twelve.
- 1.2 The Head Master of the school at all relevant times was Mr Robert Brewster ("Brewster") and the Deputy Principal Mr L Loveday ("Loveday"). There was also a School Council.

#### **The appointment of Kevin Guy as Senior Resident House Master**

- 2.1 In October 1986 Brewster reported to the School Council that following a previous meeting, when it had been advised that the then resident House Master Steve Warren was leaving to get married, a man had now in fact been appointed to this position.

2.2 This was Kevin Guy ("Guy") who was a single man, 35 years of age and a trained primary teacher who acquired his initial training at the Guild Teachers' College in Sydney, and who was currently engaged in working towards a Bachelors Degree in Education at Armadale. He had taught at St Columbus College, Trinity Grammar, Sydney Grammar Prep School and for the last seven years at Gibgate School, Mittagong (Freshman Junior School). He had a comprehensive background into Co-Ed teaching and had been involved before in primary boarding school experience.

2.3 As Senior Master at Gibgate he had supervised teaching staff in terms of administration and curriculum development, and timetabling. He had undertaken a vital role in outdoors education of children in terms of field trips, bush walking and camps. He had also organised excursions and study tours, the most recent being a tour of Japan with a group of year 5, 6 and 7 children.

2.4 Prior to his appointment, Mr Guy had a complete day at the School with Brewster, the staff and the children. Brewster reported,

*"We all gave him an 'A' rating, and looked forward to his involvement with us next year (1987)."*

Thus Guy became the Senior Resident House Master for 1987, 1988, 1989 and 1990.

- 2.5 Other persons who were involved in the conduct of the boarding school were Mrs Adermann, who was the House Mistress, and two nursing sisters, Christine Munro and Penny Grant.

### **Concerns about Guy's behaviour**

- 3.1 In November/December 2001 the Supreme Court of Queensland at Toowoomba Corporation heard a claim against the Corporation of the Synod of Brisbane Diocese (the "Diocese") by a former student and boarder (who shall be called AB), because she had been sexually abused by Guy. The jury found that AB had been sexually abused by Guy and that the Diocese and its employees had failed to take reasonable care of AB. She was awarded very substantial compensatory and exemplary damages (See para 5.2)
- 3.2 It is not possible to precisely identify the evidence which the jury accepted, and which formed that basis of its findings, but it is relevant to set out some of the extracts of the evidence which typify the Plaintiff's case. This is to give the background to the unfolding of a saga of shocking sexual abuse.

### **The Evidence of EF**

- 3.3 EF was a boarder at TPC from 1986 until 1990. She said that she was very close to Mr Guy and spent a lot of time together.

*Q. "You might just tell the jury when you say 'very close'. Just tell us how often you saw him, when you saw him and what sort of things you did together.*

- A. *Mr Guy used to train me personally for my cross country and athletics training. He would take me to Webb Park and the school oval and train me in spare time. We used to go out in his car and he would take me to video shops, McDonalds. On an occasion he took me out to buy some running shoes called Spikes. We just used to spend a lot of time together.*
- Q. *Well how frequently were you having these outings.*
- A. *At least once a week. We would go out in his car somewhere and training could be two or three times a week or even more in cross country seasons.*
- Q. *When he was training you, well you just tell the jury what part he played. What did he do as far as you were concerned.*
- A. *He was very much my personal trainer, so that when it came to running cross country before and afterwards he would lay me down on the ground and physically manipulate my muscles by way of pulling my legs up to my chest or he would stretch my arms around to stretch out my muscles between my chest and that sort of thing.”  
EF was then asked about Guy’s relationships with other students.*
- Q. *“ . . . Can you tell the jury something about that.*
- A. *He had a number of students that he was close with and they would spend a fair amount of time with him also.*
- Q. *Was there any characteristic these students had . . . what sex were the students.*
- A. *His favourite students were female – yes, female students.*
- Q. *And did these females have any characteristic about them.*
- A. *Blond hair, blue eyes, dark skin.*
- Q. *Now did you make any observations of him in the company of these other girls that you speak about.*
- A. *They were very close to him. Some would sit on his knees. They were just very close to him. They were always around him.*



Q. *Alright when you say 'always around' just describe the scene that you would have seen if you were a fly on the wall if you looked at them what would you see.*

A. *If they were on the short walk he'd be sitting down on the bench and they'd be either standing around him or sitting at his feet. Some would be on his knee. At the pool area it would be the same sort of scenario. They'd be sitting on his knee or around him or running off and then coming back but always milling very closely around him.*

Q. *And what about him can you say what he was doing as far as they were concerned.*

A. *Sitting there and talking to him and just around them, he wasn't doing anything in particular, just general conduct. . . .*

Q. *Now also at the pool can you say anything about suntan lotion.*

A. *Mr Guy used to like to rub suntan lotion on his back so he wouldn't get burnt . . . . Mr Guy would put suntan lotion on my back on various occasions so that I wouldn't get burnt and vice versa."*

*EF then said that she would frequently be summonsed to Mr Guy's room.*

*". . . . It was very regular it could be a couple of times a week or it might only be once a week. . . ."*

*EF then described the kissing of Mr Guy and AB.*

Q. *"You might just tell the jury about that incident if you will.*

A. *I was sitting towards the back of the bus and I heard a number of boys in the back row talking that they had seen or heard rumors about Mr Guy and AB kissing.*

Q. *And what, if anything, did you do about that.*

A. *I waited till I got back to the school and then went to Mr Brewster's office and told him that I had seen AB and Mr Guy kissing.*

Q. *As closely as you can recall what was the exchange from the time that you went to Brewster's room what did you say and what did he say.*

A. *When I told Brewster he was very angry and said "where, when did all this happen. It's a very serious allegation that you're making" and because I'd only heard the boys talking about it I said "Well I hadn't actually seen it, I'd just heard that it happened". And he was very angry at me for saying that I'd seen it and it was a very serious allegation and I got a week's detention.*

Q. *As far as you were aware did Brewster make any investigation into the suggestion or the allegation.*

A. *He didn't say that he was going to investigate it all he said to me was that I had a week's detention and not to talk about it.*

Q. *Can you say anything about Mr Guy's conduct at the table.*

A. *Mr Guy would ask me to pass him the milk or the sugar for example, but when he was asking he would put his hand on my knee and rub my leg when he was asking me to pass him whatever it was he wanted.*

Q. *Now do you remember a particular incident that happened later in the year 1990 when you decided to shave your legs.*

A. *Yes.*

Q. *Would you tell the jury about that.*

A. *It was either in late July or early August that I had decided I needed to shave my legs and I shaved them right the way up, being that I was learning all these things and somebody dobbed on me and Mr Guy called me to the short walk and sat me down and said to me that 'girls shouldn't shave their legs any higher than their knees because when men like to feel their legs they like to feel them smooth and not prickly' and as he was telling me this he had his hand under my gingham and he was feeling my leg right up to where my knickers go.*

Q. *What part of your leg was he feeling.*

A. *My thigh and all around the inner thigh.*

Q. *What were you doing at this time.*

A. *I was just sitting there crying I didn't know what to do. EF later told her mother about that incident and the following exchange occurred.*

Q. *And what if anything did she do.*

A. *She grabbed me by the hand and we went over to Brewster's office and went in and Mum said that Mr Guy had been touching EF. Brewster said to us 'sit down' and he said 'EF has a very vivid imagination and I wouldn't believe everything she says'. And then he asked me to leave the room and I went outside."*

### **The Evidence of EF's Mother**

3.4 EF's mother gave evidence. EF told her about what had occurred in respect of the leg rubbing incident.

Q. *"And just tell the jury what happened will you.*

A. *Because it was a day that I came up and what EF had told me I went straight to the office (of the headmaster) and he happened to be in his office and we went straight in and I was very upset, very emotional and upset about the incident and I confronted him and told him what had happened, what EF had told me. He then said to me I shouldn't believe everything that EF said. She had a very vivid imagination and then he asked EF to leave the room and go and sit outside while we had a meeting.*

Q. *And what transpired at that meeting.*

A. *We discussed what EF had told me, having been rubbed on the inner thigh and just about the whole incident and I can't remember everything that was said I'm sorry. It was just such an emotional time you know, just listening to what EF had told me but he said he would look into the matter.*

- Q. *Did he so far as you can recall, did he say anything about Mr Guy.*
- A. *He reassured me that Mr Guy was a professional teacher and I don't know if he used the word 'teacher', but he said that he was a professional and that he held him in high regard, that he would look into the matter anyway and speak to Mr Guy about the incident.*
- Q. *And had he not indicated that he would speak to Mr Guy and look into the incident, what were you going to do.*
- A. *Well I was really upset and I wanted to take her out of the school but after I'd spoken to Brewster I felt that she was in good hands and that he would deal with the matter and investigate it and that she would be safe."*

### **Brewster's Reaction to EF's Complaints**

#### 4.1 In his evidence Brewster said:

*"Yes again I'm a bit vague on the actual time. There was a young girl who came into see me with her mother and I can't remember the time of the year because it wasn't recorded in the diary that I still have possession of. Again I tend to think it was towards the end of the year and the girl alleges Mr Guy had chastised her for shaving her legs and at that time there was a regulation that girls did not shave their legs unless there was a special set of circumstances where permission was given etc. And she extended that beyond that particular incident by simply saying as he was chastising her on the short walk he had rubbed his hand up her leg and such was the nature of the particular girl in question who in my experience was prone to pretty heavy exaggeration I suggested to her that that might not be true. . . .*

- Q. *Well what did you do in response to that complaint.*
- A. *I went to Mr Guy and told him of this allegation. He agreed that he had spoken to EF and told her that this must not happen again and she must not do it.*
- Q. *Well when you say 'she must not do it'.*

A. *Oh sorry, she must not shave her legs and I said well further to that she alleges that you stroked her leg above the knee. He denied that flatly and said that was absolute nonsense that did not happen.*

Q. *Right did you do anything else in relation to that complaint.*

A. *I saw EF and told her that it was a very clear feeling that Mr Guy that he did not stroke her and tried to see whether or not she exaggerated according to her likes and said you know she wasn't but it was very difficult for me to determine whether in fact she did or she didn't. I had on the one side the denial of the Senior Resident Master, and the other side the story of a girl who often elaborated and made up various stories so I then counselled to say – it would be terribly careful what you say to people is absolutely accurate.”*

4.2 In his evidence in the Supreme Court Brewster said he had no recall of EF complaining about Guy kissing another student.

### **Evidence of Jeanette Murray**

4.3 Jeanette Murray, formerly Mrs Adermann, gave evidence of her observations of Guy.

Q. *“Alright now can you describe for me his conduct with the children, with the girl children at the school in 1990.*

A. *Yes when Kevin was on duty in the afternoon he'd set up what we call the short walk and he always had groups of girls all around him, hanging around his neck, putting their arms around him, sitting on his lap, sitting all around him on the ground in front of him. I didn't really worry about that early in the part, because I just thought these are little ones and they love his affection.*

Q. *When you say they 'were little ones' what age were the children.*

A. *They were year 2, 3, may be 8, 9 year olds.*

Q. *Now do you recall after the event that you've told us about on 9 November, do you remember talking to Brewster about these events. About AB.*

A. *I don't know what I would have said to Bob Brewster. I feel I would have expressed my concern and my feeling that something had happened and because I was really worried I can remember him saying "He is the best thing that ever happened to this school since sliced bread".*

Q. *So that's all that he said.*

A. *So I didn't go any further.*

Q. *Now you've told us that you were worried about 9 November.*

A. *Yes.*

Q. *But before that did you have any serious concerns.*

A. *No only the over familiarity of Kevin and the girls that did cause me some concern but nothing more sinister. It was just this over familiarity with the girls . . . some parents had mentioned to me that it didn't look right. It was then that I could sort of see that I, now I realise that it wasn't right and the school, you know I trusted the man.*

Q. *Alright but you say your view changed after the events of the 9<sup>th</sup>.*

A. *Oh most definitely yes. Well I was concerned before the 9<sup>th</sup> with these girls all over him and the over familiarity but after the 9<sup>th</sup> I had a feeling, a gut feeling that something had happened but I didn't know."*

She was asked whether she discussed her concerns with any of the other staff at the school and she answered,

*"I discussed it with Chris Munro who was a nursing sister there. I didn't go to Brewster as I'd been to him on other occasions with concerns of the boarding house, concerns that girls brought to me. Not within the boarding house but from the school area and I had spoken to Brewster and he was a man that could use words and he would turn my concerns around and make it look innocent. I'd go away*

*feeling I was just a trouble maker so I got to the stage that I felt Brewster wasn't going to listen to me.*

Q. *Can you just give the jury an instance, what sort of things are you talking about, tell us an instance that you had to go to him.*

A. *Well there was one incident that I can remember very clearly. May be three or four of the girls in the boarding house came back to the boarding house with a concern about a certain teacher. And in the class room when he was leaning over them over the back of them to show them something he was playing with their bra straps. Now these little girls were really really concerned. And I went to Brewster about these concerns and he turned it around and he said 'No he's a (inaudible) man and the girls are misinterpreting what you know he's supposedly doing'. So I came away feeling I'm just a trouble maker but taking these concerns for Brewster."*

### **The Evidence of AB**

4.4 AB described the protracted abuse that she suffered from Guy typified by the following. This makes harrowing but necessary reading. The Board has spoken to AB's parents, and whilst she is aware of the Enquiry, unsurprisingly, she has no desire to go over things again.

*“Q: Did he say anything to you?”*

*A: He said, “Oh I'm glad that you came along, I wasn't too sure if you would.” I was quite nervous so I was shaking and he touched my shoulders and he said, “Oh you're shaking” and he sort of gave me a hug and rubbed my back and started to tell me I was very special and things like that.*

*Q: Now just tell the jury what happened.*

*A: He would sort of grab my arms around my back and touch my hair and touch my face and he said, “Would you like to sit down” and I said, “Oh yea” so we went*

*and sat over near the TV and sat on the floor and then he said "Would you like to lay down" and I said, "Oh, oh, I don't know", and but he laid me down anyway and then he kissed me and after kissing me he said I was a very good kisser and he then proceeded to touch me all over.*

Q: *Where did he touch you.*

A: *He touches me on my breasts and my stomach, all over my legs, between my legs.*

Q: *Were you clothed.*

A: *Yes.*

Q: *Did he remove any of your clothes.*

A: *Not at that stage, no.*

Q: *Did he do anything else to you on that occasion.*

Q: *Well what happened beyond that.*

A: *Beyond that it was regular meetings once a week – even twice a week – on a Tuesday night or progressively twice a week to every Saturday night, and he would, I remember on one occasion he said to me, "Do you want to take your top off" and I said, "No" and he said "Well if I take my shirt off will you take yours off", he said, "That's fair" and I sort of went "Oh, oh, O.K." and so our shirts were taken off and then he would fondle and kiss me and kiss my breasts, my nipples, and then he would, and then he took my pants off and he would be feeling me without my clothes on so at this stage I was naked and he would constantly tell me that I was very special and that he was falling in love with me.*

Q: *AB from the commencement about April, how long are we now into it before you became fully naked with him.*

A: *I would say it was probably after six occasions that I'd been with him so probably in a matter of four weeks.*

Q: *Alright well did things change from then on, did they progress any further.*



A: *Yes, he would, when I was naked one time he put his finger inside my vagina trying to penetrate me and then when he saw that he wasn't succeeding with that he would put his mouth in between my legs and then he would ask me if I had an orgasm.*

Q: *Did he require that you ever do anything with his penis.*

A: *He would take my hand, my right hand and put it around his penis, he would make me feel it. He would ask me if it's big, if it's hard and it was and he would say, "Rub your hand up and down", he said, he would say, "Don't be frightened if something wet happens" which it did.*

Q: *AB how regularly then were you seeing him at this time.*

A: *Twice a week.*

Q: *And how long did that continue for.*

A: *That continued for quite a number of months probably about three months that was happening.*

Q: *What do you say about the period after that three or four months.*

A: *He was, he didn't want to see me as regularly so then I started to feel rejected that I wasn't special anymore. I was frightened because he was constantly telling me that no one would believe me if I told somebody and that I would get into trouble off my parents if I told them.*

Q: *AB just let me take you back to these times that you were with him. You might just tell the jury towards the third or fourth months before things started to regress what sort of things were happening between the two of you, what were you doing to him and what was he doing to you.*

A: *He was kissing me all over, he would make me touch his penis, a couple of times he made me give him oral sex to him and as things, as we were spending a lot of time together he would say to me, "Oh you've just had your period this is the best time to have sex" and on one occasion he did put his penis inside me with a*

*condom on but he asked me if it hurt and I said "Yes it did" and he withdrew.*

Q: *Was that the only time that you ever saw him with a condom.*

A: *No.*

Q: *Well AB could I take you up to the events then of 9 November, do you remember that.*

A: *Yes.*

Q: *Just tell us about that evening, let me ask you this, was there anything particularly different about 9 November to any other time.*

A: *Yes there was. The school choir went to Goondawindi and most of the girls in the boarding school were in the choir. There was probably only about ten or twelve of us, ten or twelve who weren't in the choir. I was, I was in the choir but I said I didn't want to go because if I got as far as Goondawindi which is only an hour and a half from home I'd say I want to go home but they wouldn't let me and Mum said "Oh look I'll come and see you at Goondawindi" and I said, "No Mum I'd prefer to go home than just get about half a way from it". And so I was at the school and "M" my friend at the time said "Well you're in the dorm by yourself you know, why don't I come and sleep in the dorm in the next to you" and I said, "O.K. that's fine" and we asked Mrs A and she said, "That's fine, just as long as you leave the bed nice and neat and tidy that's fine". So that night we were allowed to stay up a little later than usual because there were only ten or twelve of us in the dorm and Mrs A came along about half past nine I guess it was and said "O.K. it's lights out, you know, time to go to bed girls", I said, "Oh O.K." and I was to meet him at 10 o'clock.*

Q: *Now in relation to that meeting how and when had it been arranged.*

A: *It had been arranged during the day at lunch time, and again after lunch, after we'd had lunch in the dining room. He called, he kept me back from lunch when the other students were dismissed from lunch, and he asked me to go to the common room that night at ten o'clock.*

Q: *Alright so Mrs Addermann turned the lights out at 9.30 and what did you do.*

A: *"M" and I were in bed talking for about fifteen minutes or so. I thought she'd gone to sleep but I got up out of bed and she thought that I'd gone to the toilet and I'd been gone for about, oh I don't know how long I'd been gone, for an hour or something like that I guess probably not even that long, and I was with Mr Guy in the Year 7 common room.*

Q: *What were you doing.*

A: *We were undressed, and he was touching me and that, yea.*

Q: *And what happened.*

A: *The next thing I knew there were footsteps out along the common room but it was a longer stride and with shoes on and it was different footsteps than I heard from before and the door was pushed on again and he said "That's just the security guard, don't worry about it" and the next thing we knew Mrs A and there must have been somebody else, and she was frantic, she was, she said "Oh she's gone, she's not here, where is she, she's not here"; and you know there was a torch flashing threw the windows and things like that. I can't remember if there were curtains in there. There and at that stage she sort of panicked, and he said "Quick get your clothes on, I'm going to go out and see them", and he went out there and he spun a story that he.*

Q: *Well you didn't hear the story.*

A: *I didn't hear the story.*

Q: *Alright so he went out and saw them as far as you know. What happened next as far as you were concerned.*

A: *He came back and saw me and he said, "Look I've told them that I found you sitting out on the steps just outside the common room that leads to Mrs A's flat and he said that I said, I found you upset about not having someone else in your tent to go to camp and anyway he took me down to Mrs A's flat and CD was there along with the other two house mistresses.*

Q: *Who's CD.*

A: *CD, she was another student in Year 7.*

Q: *And the other two house mistresses were there.*

A: *Yes. . .*

*I noticed that Mrs Addermann had been crying, she was upset I assume because I was gone and she sent CD into her spare bedroom there and had two single beds in there and so we went in there and we didn't actually say anything to each other. As far as I'm aware the adults were talking in the other room. We couldn't hear what was going on or what was being said.*

Q: *Alright, did you have any further involvement on the evening with Mrs Addermann or anybody else.*

A: *Mrs Addermann let me stay in that spare room and sleep in there. The next day she was able to take me out for half a day in the morning, just down to the Myer centre and she said, "Look if you want to say anything to me you can you know, just if you want to talk about anything you can talk to me". I remember going up to her twice that day wanting to say something but I was too afraid to.*

Q: *Now AB you went home then as you've told the jury at the end of your 1990 school year. How were things at home.*

A: *I didn't really observe anything at home because I was mostly in my room with my door shut not having hardly any contact with my parents or anybody else at all. . . I remember Mum coming into me, I was in watching television.*

Q: *When was this approximately.*

A: *December. I remember Mum coming up to me and she seemed to be very nervous and she had a pen and pad in her hand and she said "I've just had a phone call from the police" and I instantly knew what it was about. She said, "Somebody else has contacted the police about some behaviour at the school" – I'm not too sure if they were her exact words or not but she said, "The police want to know if you have anything to say." I remember I went out to the shed,*

*to the car shed, away from the house, I think I was gone for about half an hour and I went back into Mum and I said, "Yes Mum I do have something to say" and then I remember Mum ringing the police and they made arrangements to meet at the Goondawindi police station which is an hour and a half from where we live. I remember the travel there, the car trip, everyone, we were all very quiet, no one said hardly anything until we were actually in Goondawindi. Mum sort of started to say "Now we're going into the police station and I just want you to tell the truth, be on your best behaviour and don't make anything up. Don't tell any lies". And I said, "Yes Mum."*

Q: *Now up til then had you told anybody about Mr Guy.*

A: *No I hadn't, no.*

Q: *So you saw the police at the police station.*

A: *Yes.*

Q: *What had your behaviour towards your parents been like in those first few weeks at home.*

A: *Very distant, I think I was even aggressive at time, yea I think.*

Q: *Right well AB you saw the police at the Goondawindi station and did you tell them what had happened.*

A: *Yes I did it was a police woman who interviewed me with video tapes, three tape recorders, video camera and all that kind of stuff.*

Q: *And do you remember approximately when that was.*

A: *I don't know, probably around 12 or 13 December or something like that I'm not exactly too sure on the date.*

Q: *Alright do you remember subsequently hearing about Mr Guy's death.*

A: *Yes I do.*

Q: *How did that come about.*

A: *It was a phone call from the police that Mum had taken. I was in watching TV again and Mum came in crying and I thought, Oh what's going on here and Mum said "I've just had a phone call from the police*

*that Mr Guy has committed suicide and she was crying and I thought she was crying because she had sympathy because he was dead". I said, "Good, I was glad that he was dead," and I didn't say anything more about it and Mum said, "I'm quite sad," and I was horrified, I was horrified that my mother was crying because this man was dead, and that created my hate towards my parents. I hated my parents for a long time.*

***She then spoke how she eventually went to Joy Connolly in 1997.***

*Q: AB from the time that you told us about when you saw Joy Connolly at Stuartholme early in your Year 8, had you had any counselling at all.*

*A: No not up until that stage, no.*

*Q: Now what happened about this time.*

*A: About half way through 97 I couldn't cope with the dreams I was having.*

*Q: Well just tell us about those dreams.*

*A: I was dreaming about Kevin Guy, about him coming after me.*

***Cross examined:***

*Q: Now while Mr Guy was spinning his story on 9 November about where you'd been and what you'd been doing you were concerned to give every appearance that what he said was true weren't you.*

*A: Yes.*

*Q: Alright and do you recall giving Mrs Brewster a big smile when she asked if you were alright.*

*A: No, I don't, no.*

*Q: Would that be right though you were putting on an act to make it seem that his story was true.*

*A: Yes I believe I had become a very good actress."*

4.5 The charge of Her Honour Justice Wilson cogently summarises the issues in the case, and accordingly demonstrates the way in which the complaint of AB was handled.

The charge explains to the jury its duty and entitlement with respect to deciding facts. Whilst necessarily it cannot be known what went on in the jury room, the answers given to the questions obviously disclose the jury's view of the evidence. It can be said that the verdict, and particularly that in respect of exemplary damages reflected the condemnation of the jury of the manner in which the complaint was handled. Naturally, the whole of the charge should be read to ensure that the extracts are seen in context.

1. *Summary of the issues*

The plaintiff's claim is for damages both compensatory damages and exemplary damages. It is based on allegations of negligence by the defendant and those for whose conduct it is alleged to be responsible and assault by Mr Guy for which the defendant is alleged to be responsible.

2. *You have to disregard anything you may have heard of the reputation of the plaintiff or of any of the witnesses or of the Prep School or of the defendant, the corporation of the Synod of the Diocese of Brisbane. That is, anything that you have heard outside this case.*

*You can take as proved the matters that have been admitted formally before the court and I have a note of four of them. The first, on the first day of the trial Ms Dalton for the Defendants admitted that in the middle part of 1990 the plaintiff was repeatedly subjected to assaults of a sexual nature perpetrated upon her by Kevin George Guy which included fully undressing her, fondling her breasts and genitals, digital penetration of her vagina and forcing her to fondle his penis. ....*

3. *When you are considering this question of a failure to exercise reasonable care, both when you are considering the question of the failure by the defendant itself to do so and when you're considering the question of failure by one or more of its employees to do so, you must consider only the period up to and including 9 November 1990, that is, the period up to when the abuse ceased. You may be critical of the defendant's conduct after that. That may go to the question of exemplary damages, something I will come to later, but it doesn't go to the issue of liability for negligence, whether it be primary liability or vicarious liability. Mr Myers has submitted to you that Mr Brewster the headmaster, knew or ought to have known of what he called inappropriate behaviour on the part of Mr Guy towards female students including the plaintiff. He submitted that you will find this conduct was openly displayed in 1989, but Mr Brewster's own observations were inadequate; and that his appreciation of the significance of what he saw or must have seen was itself inadequate.*
4. *He submitted to you that Mr Brewster failed to recognise or to recognise and act on complaints, and he has referred you first to EF's having come to him in early 1990 to gossip to Mr Guy kissing a girl. Now Mr Brewster said he had no recollection of that. It is up to you to decide whether you accept that she did go to him with that story, and what you make of it and what you make of the response that she said he made.*
5. *Next he has drawn your attention to the expressions of concern by the nurses in the middle of the year, and to their evidence of how Mr Brewster responded and on the other hand to his evidence.*
6. *Thirdly there was the complaint by EF and her mother about Mr Guy touching the inside of her thigh. He told her that she shouldn't shave her legs. Again, you have to consider on the one hand the evidence of EF and her mother as to how that complaint was made and how Mr Brewster responded to it. You have to consider his version and you have to consider what he did after EF and her mother had gone. (Going to Guy, accepting Mr Guy's explanation), and you have to consider the adequacy of how he responded in the circumstances.*
7. *Ms Dalton stressed to you that what people saw before 9 November and that what they reported to Mr Brewster were vague and ambiguous. Sister Munro and Mrs Adermann*



*said they didn't see anything sinister. As I have said Mr Brewster said he had no recollection of EF's first report about Mr Guy kissing a girl. There is evidence that it was in EF's nature to embellish stories, and she admitted having falsely said that she had seen the kissing incident.*

8. *Ms Dalton submitted to you that, given the nature of the complaints made to him, Mr Brewster's response was quite reasonable.*

*... It is for you to decide whether Mr Guy did demonstrate inappropriate behaviour towards the female students. That's behaviour sufficiently untoward to be a warning sign – and it is for you to determine if he did whether Mr Brewster knew or ought to have known about it and the adequacy of his response to it.*

*It is for you to decide whether complaints were made to Mr Brewster and whether he responded adequately to them. Did he do enough to investigate. Was he remiss in accepting Mr Guy's explanations. You have to determine and evaluate those questions.*

9. *In the present case the defendant owned and operated the school. Running schools was just one of its undertakings, and the Prep school was just one of the schools it ran. The Archbishop was the most senior officer of the defendant. The defendant employed Mr Dr Coman to be the head of its school division.*

*Mr Brewster was appointed by the Archbishop in council that he was appointed by the Archbishop acting with the advice of a consultative council.*

*It was Mr Brewster who was immediately responsible for the running of the school. He had the power to hire and fire staff. He had to report to a school council, a council which had been appointed by the synod – by the defendant.*

10. *Broadly what that alleges is a failure to have adequate systems in place and to implement or police adequate systems. As a matter of law the defendant was obliged to have in place proper systems to ensure that reasonable care was taken of the boarders, including the plaintiff, and as a matter of law, it was obliged to implement those systems and to police compliance with them.*

11. *Paedophiles act clandestinely. That's a fact of life. The defendant was obliged to have in place and police*

*compliance with systems which took account of the possibility of their being a paedophile lurking about.*

12. *You will also remember the evidence that the meetings with Mr Guy were arranged to take place, effectively after the last bed check about ten o'clock at night. So you have to ask yourself whether it was good enough for the house mother (Mrs Adermann) to go to bed at ten o'clock and make no further checks. In all the circumstances you have to weigh that up one way or another.*

*Then it is alleged that she failed to report matters of concern; she failed to request investigations.*

*Well you will remember her evidence that she said she saw nothing sinister but on her evidence she has seen enough to give her serious concerns and her explanation for not reporting it to Mr Brewster was that he would have made her feel a trouble maker. And you have to ask yourselves if her concerns were serious enough, was that a good enough excuse.*

*It would be open to you to conclude that her failure to take up those concerns with Mr Brewster, however difficult she may have found it to do so was remiss of her – remiss to the point of being a breach of duty of care to the plaintiff.*

*You also have to consider whether they may have adequately voiced their concerns but it was Mr Brewster who didn't appreciate the significance of what they were saying. This is an aspect of whether he was so remiss in the performance of his duties to be negligent.*

13. *You should also consider the extent to which Mr Guy had power or authority over the plaintiff. He was the senior resident master. She was a little girl of 12 or 13. You should consider how vulnerable she was to that power.*

- 5.1 The jury apparently accepted that and other evidence as establishing a lack of reasonable care on the part of the Diocese through its officers and employees. That evidence was apparently treated by the jury as providing warnings to Brewster, Mrs Adermann and Sister Munro of Guy's potential behaviour, and because nothing was done about it or steps taken to prevent it, it

was apparently concluded that there had been a lack of reasonable care of the boarders in the school. Further evidence upon which the jury apparently founded its verdict is contained in extracts of the evidence of Brewster, referred to in paragraph 6 below. That and similar conduct, the jury apparently concluded rang “alarm bells”, which were not heard or ignored.

5.2 The vital questions which the jury answered were,

1. (a) *“Did the Defendant fail to take reasonable care of the Plaintiff (AB) whilst she was a boarder at the Toowoomba Preparatory School.”*

Answer: Yes

2. (a) And similarly, in 2 (a) the question was asked:

*“Did any of the Defendant’s employees fail to take reasonable care of the Plaintiff (AB) while she was a boarder at the Toowoomba Preparatory School”.*

Answer: Yes

5.3 The Board accepts, as it must, the findings of the jury based upon the evidence led of which the above is a sufficient example. Following the verdict, the Diocese sought advice as to whether the verdict could be overturned on appeal. Senior Counsel and Junior Counsel (who appeared at the trial) advised that in their opinion an appeal would not succeed either on liability or whether the damages awarded were excessive. A further opinion to like effect was obtained from another Senior Counsel.

## The making and the handling of the Complaints

- 6.1 In order to see how the complaints were made and handled it is necessary to refer to the long history of the events, which led to AB, and another student and boarder called CD issuing Supreme Court proceedings against the Diocese.
- 6.2 The first complaint that Guy had sexually abused a student was made by CD on 13 November 1990. Consequently, Brewster reported to a meeting of the School Council held on 30 November. The report referred to an earlier incident which had occurred with AB on 9 November 1990, and how Brewster dealt with it.
- 9 November 1990,

*"I received a telephone call from the Mistress in charge of the girl boarders. . . Mrs Janette Adermann, saying that one of the girl boarders, AB, was missing from her bed. Mrs Adermann rang me as the Senior Resident Master, Mr Kevin Guy could not be raised by phone. My wife and I went down to assist in the search and after about fifteen minutes AB, accompanied by Mr Guy, appeared at Mrs Adermann's door. Mr Guy's account was that when doing his rounds whilst locking up, he came upon a distressed AB dressed in her pyjamas and dressing gown outside Arnott House sitting on the steps leading up to the recreation room. Mr Guy enquired as to what the problem was. AB told him she was having difficulties with peer group relationships. Mr Guy suggested that she should go straight back to Arnott House and to bed. AB was vehemently opposed to the idea. Mr Guy, noting she was shivering and still upset, did not want to leave her by herself and summoned Mrs Adermann as he felt AB could well run off somewhere else. As it was chilly he suggested they sit down in the nearby recreation room which would give him more time to calm her down and return her to the dormitories. They sat in the dark in the recreation room and talked further and it was not long before AB recovered her equilibrium and agreed to go back to Arnott House (it was during this period of approximately 20 minutes – half hour that the search party was looking for her). AB and Mr Guy duly arrived at Mrs Adermann's door to be met by Mrs*

*Adermann, my wife and myself. Later in conversation with me Mr Guy raised the delicate situation he found himself in alone with a young girl at 10.00 p.m. at night with the lights out, but felt at the time there was no other option that could resolve the problem. He did however agree with me that an alternative strategy should have been followed (particularly in the light of subsequent events)."*

6.3 This was false, as the evidence of AB at para 4.4 demonstrates.

When AB's mother come to the School shortly afterwards, because of concerns about AB, no one at the School or AB told her of the incident.

6.4 On Monday 19<sup>th</sup> November 1990 Brewster asked AB to drop in for a chat about the problem of the previous week. He stated that she professed herself well and truly cured, and agreed that it was not a wise move to suddenly wander off into the middle of the night in the way in which she did but to seek advice from Mrs Adermann if such a situation arose again.

*"I then asked her if she felt Mr Guy was a help to her during the crisis on Friday night. She emphatically stated that he was. I further asked if there was anything that Mr Guy either said or did during that occasion that caused her concern or embarrassment. She said there was not and he was very helpful. I judged from her entire reaction that there was no cause for concern so I pursued the matter no further."*

(By then AB said in her evidence above, she had become a very good actress.)

6.5 Before those events had occurred, Brewster as he said in his evidence to the Supreme Court,

*"There was a concern that the hospital sisters voiced. They didn't come to me specifically, but in my times when I*

*dropped in on them at the school hospital just to check on how things were going I recall there was a change over and both sisters were there and they said that they were not comfortable with the fact that they observed Mr Guy along the short walk area being what they felt was over familiar when chatting and talking to the girl students. When I questioned further . . . they said, oh he was just talking and joking and they were touching him on the shoulder and generally sky larking around him. They felt that this was not appropriate. They were worried about it but they didn't observe anything beyond that. So that was one occasion.*

Q. *Well what did you do in relation to that occasion ...*

A. *I let Mr Guy know that there was a perception from the Sisters that he was being a little over familiar with the girls and spent what appeared to them – the Sisters – to be an inordinate amount of time with the girls in off duty moments during the day time.*

Q. *Yes and what was his response if any.*

A. *His response was that he was overall responsible to all of these student boys and girls and that he in fact lived among the boys every night of his school life. He saw a lot of them and that he would be dealing with them up there, he'd you know put them to bed, turn the lights out and so forth whereas the girls who he could only see during the day time over above that of course girls by their nature were, are more social beings than boys at that age and stage and they would seek any opportunity to involve themselves in the social way with whoever was prepared to stop still and talk and chat. And that he didn't feel that there was anything untoward going on. So my response to that was "Well you know it might just be well to bear in mind this was a perception that perhaps was not to be encouraged".*

## **Complaint of 13 November**

7.1 Brewster in his report wrote,

*“On 13 November at 10.30 p.m. the lady in charge of the girl boarders, Mrs Janette Adermann phoned me to ask if I could go immediately to the girls’ house (Arnott House) as there was a crisis requiring my urgent attention. On arrival at Arnott House I found Mrs Adermann, a House Mistress, Miss Penny Grant and a girl boarder/student CD. Mrs Adermann told me that it was CD’s wish to tell me what she first divulged to Miss Grant earlier that evening.*

*The story was as follows – during second term (April-May) on three or four consecutive Saturday nights she was singled out and detained after the other boarders left the recreation room by the Senior Resident Master Mr Kevin Guy. CD alleged that whilst Mr Guy was talking to her he placed his hand down inside her blouse and fondled her bare breasts. She further alleged that he put his hand inside her pants and stroked her pubic region. Vaginal penetration of any description did not take place nor was there any request from Mr Guy that CD should touch him. CD did not ask Mr Guy to desist as she said she was too scared to. He did not threaten her in any way but did ask her to keep quiet about what was occurring. CD affirmed that since May no further contact of this nature had taken place. Although it was not stated a possible reason to delay talking to anyone about this could well be in response to one of the lessons on human sexuality that my wife conducts in class at school which stressed the need for girls to seek help from a trusted person if ever they are sexually interfered with.*

*CD at this stage had not mentioned these incidents to anyone else, nor was she desirous of telling her parents. After she had finished her story I thanked her for sharing this confidence, stressing that she had done the right thing and assured her that the problem was now mine to deal with and I would keep her informed as to the nature of future developments. After further discussion with the two ladies it was agreed that they also should leave it to me to pursue and I would keep them posted also.”*

7.2 What Brewster had been told by CD was that a criminal offence had been committed. However, no suggestion was made to CD that she could, indeed, should report the matter to the police, or that he (Brewster) should. The Board has possession of guidelines for teachers namely a “Teacher’s Handbook for the Prevention of Child

Abuse” which was published in 1986. It was claimed that this was distributed to all Queensland schools in 1986. The handbook states clearly that school personnel were not to investigate allegations of child abuse, but were to make reports to the Statutory Child Protection Authorities. The handbook also stated that, under the legislation appertaining in 1986 teacher reporting was voluntary rather than mandatory but that teachers were protected by the Crown from civil action if they reported cases that were not confirmed. If a staff member had reasonable suspicion that child abuse was occurring they were to report it, to the appropriate agency, it would be possible for action to be taken against the teacher on the grounds of breach of duty of care. (page 13) In this case there was no attempt by the school staff and management to make reports when suspicious and abusive behaviour was reported.

7.3 On Wednesday 14<sup>th</sup> of November Brewster spoke with Mrs Adermann advising her that he would be taking the problem to both the Chairman of the school council Archdeacon Booth and to another member of council Dr Jeff Bailey who is a consultant clinical psychologist.

*“I spoke with Dr Bailey making him aware of the problem. It was readily agreed that whatever action that should be taken must first and foremost be in the child’s best interests. With this in mind it was felt that (a) Mr Guy should be informed of the allegation and invited to respond and (b) CD’s parents should be notified.”*



*The difficulty to be resolved was when this should be done in order to minimise the possible trauma on the child. On balance as it was perceived there was little likelihood of a repeat incident and with only a week to go before CD was due to leave, the confrontation with both Mr Guy and Mr and CD's Mother should wait until Wednesday 28<sup>th</sup> November when school would have finished." . . .*

7.4 Later that day Brewster,

*"Spoke with the Chairman of the school council. . . acquainted him with the story. He agreed with the way in which the situation was being handled and that Dr Bailey should continue to act as adviser to the school. The Chairman further expressed the need to be kept informed."*

7.5 Later that day Brewster,

*"Spoke with Mrs Adermann and Miss Grant updating progress on the issue for them. They both felt that it would be better to inform CD's parents sooner than we intended. I pointed out our reasoning, but assured them their point of view would be passed on to Dr Bailey."*

7.6 That evening Brewster,

*"Spoke again with Dr Bailey about the concerns expressed by Mrs Adermann and Miss Grant. He felt that as the alleged incidents took place in May, there was no undue haste, depending on how CD herself felt about it".*

7.7 On the Friday morning Brewster,

*"spoke with CD in the presence of Mrs Adermann and explained to the girl that it was necessary that I let her parents know of the incident. She reluctantly agreed but wanted me to do it as soon as possible."*

### **Brewster confronts Guy**

7.8 At 8.45 a.m. on 16 November Brewster,

*"... confronted Mr Kevin Guy in the presence of the Deputy Head Master Mr Larry Loveday and put the allegation to him asking him*

*directly whether he committed the alleged offence. He categorically denied committing any impropriety and had no recollection of any situation that could possibly lead up to such a scenario. The identity of the girl making the allegation was withheld from Mr Guy. He stated that he would prefer not to know in any event. The nature of his response to the whole interview was such that both Mr Loveday and myself were of the opinion that he was innocent of the accusation. I informed Mr Guy that I would contact the girl's parents on the issue as soon as I could get hold of them that same day."*

- 7.9 This was wrong. Brewster and Loveday should not have been deciding (as they apparently were) whether Guy was innocent. This was not their function. Brewster and then Loveday were aware that a thirteen year old girl had made a grave complaint of sexual abuse against a teacher. It was not for them to finally decide the credibility of Guy's denial, or indeed the credibility of the Complainant. Unless the complaint was on its face incapable of belief, (and there was no suggestion this was the case), the complaint should have forthwith been referred to the police. It is the police who have the duty and the power to act in respect of an allegation of criminal conduct, which CD's complaint clearly was. As will appear hereafter, CD's mother took her to the police on 28 November. Thus a period of fifteen days elapsed from the date of the complaint, until the police, upon the mother's initiative were notified. Had she not done this, it is questionable whether the School Council, when it met on 30 November, would have done so. The Council made no reference to reporting the matter to the police, but rather that Brewster's actions were "correct and considerably executed" (See para 7.10 below)

7.10 Brewster then phoned the mother and told her the whole story to date. He gauged from,

*“... her immediate reaction that she wanted to keep the incident in as low a key as possible and was prepared to remain anonymous and work through the problem with her daughter. I got the impression that she may well be happy to leave Mr Guy to the school to cope with. It was her intention to come down to Toowoomba the following weekend and see CD with the view to seeking an appointment with Mrs Joy Connolly, child psychologist for some counselling for CD which was a suggestion of Dr Bailey’s that I had passed on to CD’s Mother. I advised her to think carefully through the problem after discussing it with her husband and ring me at home towards the end of the weekend letting me know of any changes in attitude or in the strategies that she wished to pursue. I then followed this up with calls to Dr Bailey, Archdeacon Booth and Mrs Adermann updating them on progress and for the time being laying the problem to rest. I later saw CD who had heard from her Mum by phone and I saw Mr Guy and brought him up to date with the mother’s current reaction.”*

### **Brewster reported**

8.1 *“On Sunday the 18<sup>th</sup> of November the mother rang to say that she and her husband had decided to play it down. Kevin Guy was not to know of the identity of the girl laying the complaint. She would take CD to see Joy Connolly, psychologist, for counselling Monday week. CD’s Mother was very uncertain of the veracity of CD’s allegations and preferred not to make a major issue out of it.”*

8.2 That was not so. CD’s mother never doubted what her daughter told her. In a later letter she stated she had been affronted by the suggestion the CD’s complaint might not be true.

8.3 On Wednesday 28 November the mother sought an interview with Mr Loveday and asked him various questions concerning the incident. Mr Loveday reported that the mother,

*“... asked what I thought of CD and the gist of my reply was that I considered her to be a very intelligent girl who seems shy and rather withdrawn. The mother then asked me what I thought of CD’s allegation and I replied that I was very surprised by it. On the one hand because I had been present at Brewster’s initial interview with Mr Guy. I felt that Mr Guy was completely dumbfounded by the allegation and that his whole manner in both voice and facial expression when he totally denied the allegation convinced me of his innocence in the matter. On the other hand I could think of no substantial reason why CD would make such an allegation unless something had occurred. I told the mother that in my opinion there were some unusual features of CD’s character and make-up and I instanced her virtual collapse in fright when she was traversing the Crow’s Nest Creek gorge with the Adventure Club. On that occasion Mrs Durran had to coax CD for much of the trek, it’s something we have very rarely ever had to do. I then asked CD’s Mother whether there had ever been any occurrence with someone else at home, perhaps in the holidays, which might have initiated CD’s allegation. She replied that there was nothing nor had there ever been any opportunity for such a thing . . . .”*

8.4 Brewster was then advised by Mrs Thomas, a member of the council, that she believed that CD’s mother was going to take the matter to the police. Brewster, inter alia, upon hearing this, advised Guy that he should get legal advice.

8.5 However later that day Brewster spoke to CD’s mother and asked her how the counselling sessions were going and she said that it was very helpful.

*“I told her that it had been reported to me that she had called in the police. She denied that she had, but said that it would be an option she could well take up after further consideration. She also declared that she had not told anybody else about the affair and seemed mystified as to who could have made contact with Mrs Thomas.*

*I later told Mr Guy that the police had not as yet been contacted. I reported much the same to Mr Loveday, Mr Moore and Dr Bailey.”*

8.6 In fact, CD's mother had already taken CD to the police to whom she made statements. The police impressed upon CD's mother the importance of not revealing to the School that the police had been contacted.

9.1 28 November was the School's speech day. Dr Hollingworth and Dr Coman attended. Neither were told of CD's complaint, and the surrounding events. Notwithstanding later comments from Councillors, this reflected that the headmaster and the Council were responsible for the day to day management of the School. Thus, it can reasonably be inferred, it was considered this issue could be handled at local level without involving the Archbishop or Diocesan management.

9.2 Brewster records that on Friday 30 November Senior Constable Bill Knowles and First Class Constable Julie Cockburn of the Juvenile Aid Bureau called at school wishing to interview Mr Kevin Guy at the police station.

*"I spoke with them in my office ascertaining whether or not I could accompany them down and be present at the interview. They replied that this was not permissible, but a lawyer would be allowed to be present. I saw Mr Guy and asked his permission to contact a lawyer to act on his behalf. He agreed. Mr Moore arranged for Mr David Burns to meet the parties down at the polices station at 10.00 a.m."*

9.3 It is understood that Guy made no statement to the police, and presumably made no response to the contents of the record of interview which CD had with the police. In her record of interview CD provided greater detail of what Guy had done to her including that he digitally penetrated her, and that the abuse had continued over a considerably longer period than what she had told Brewster.

### **Complaints about Guy by other Students**

10.1 Brewster reported that on 15 November,

*“A group of year 7 boarder girls came to me in a group declaring that Mr Guy had been unfairly harsh on them, yet at the same time seemed to be favouring AB. One or two of the more outspoken ones even suggested that they thought something “funny” was going on between Mr Guy and AB (they had of course caught up with the drama of the previous Friday night). I let them talk themselves out and encouraged them to tell me all that concerned them. For the most part it amounted to nothing and led nowhere except that CD reported that she overheard Mr Guy on one occasion the previous week ask AB if she was a virgin. The question was allegedly put to AB in the lobby of a classroom block during evening homework time. I suggested to CD that she had not heard correctly, and told the girls that Mr Guy was helping AB through a difficult patch as he would for them if they were in need, and that they should be more tolerant and understanding towards both AB and Mr Guy in trying to help AB solve her problems. We all parted company amicably and they seemed accepting of my summation of the incident.”*

10.2 On 16 November Brewster reported that he,

*“... let Mr Guy know of the concerns of the girl and suggested that as AB now seemed to be on track that he should discreetly withdraw his obvious support for her which he readily agreed to do. (He denied any reference being made to AB concerning her virginity.) Mr Guy also said that he passed AB’s problem on to her mother and had arranged for the mother to come down to prep on Sunday to take AB out and to give her extra moral support.”*

10.3 All these events took place over just a few days and at this point of time i.e. 15 November, Brewster had not spoken either to Guy or to CD's mother about CD's complaints made on 13 November.

### **Special Meeting of the School Council 30 November 1990**

11.1 On 30 November 1990 there was a meeting of the School Council presided over by Archdeacon H.C.S. Booth. The minutes record inter alia the following,

*“Present: Archdeacon H.C.S. Booth, Fr G.O. Thomas, Mr J.F. Jackson, Mr G.C. Fox, Mr R.G. Brewster, Mr P.F. Moore, Mr A.G. Loveday, Dr J.G. Bailey, Mrs P.J. Krimmer, Mrs M.B. Thomas.*

*Apologies: Mr N.C. Reid – Diocesan registrar, Dr P. Coman, Mr D.N. Elliott.*

*Allegations of sexual assault on a girl boarder student presently attending this school.*

*Mr Brewster spoke to his record of events which led to this Council meeting, the period being from Tuesday 13 November 1990 to today 30 November 1990.*

*With regards to the initial interview of Mr Guy in the presence also of Mr A.G. Loveday, Mr Brewster asked Mr Loveday to acquaint Council with details of his interview with the mother of the child in question.*

*Mr Brewster added his concern as to the involvement of a member of staff who felt obliged to discuss the matter with some members of Council without referring the matter to him.*

*This incident caused concern to Council member who agree that in all matters pertaining to the School, the Head Master Mr Brewster should be the first point of contact. Mr Brewster advised that by early afternoon, Friday 30 November 1990 he had ascertained that Mr Guy was to be charged by the police on two counts of –*

*“unlawfully and indecently dealing with a minor”.*

*General discussion followed during which it was agreed that the interests of the child are first and foremost. Mr Brewster was advised that his actions were considered in these circumstances to be both correct and considerately executed.*

*Mr Fox added that he considered that the reports of both Mr Brewster and Mr Loveday should be made available to Mr David Burns, Solicitors of Bernayse & Bernayse were presently acting for Mr Guy, and to the investigating police officers, if Mr Burns saw fit.*

*Mr Brewster advised that Mr Guy had offered to resign as he was, apart from his personal concern, most concerned for the child and for the School.*

*Council requested that Mr Guy be asked to withdraw his offer of resignation and that he be advised that he is to consider himself as being on extended leave until March 1991 when the situation will be reviewed. ...*

*The Chairman requested all Council Member maintain total confidentiality in this matter.”*

- 11.2 On the 4<sup>th</sup> of December 1990 Mr P.F. Moore, the Business Manager of the school wrote to Mr N.C. Reid, the diocesan registrar, enclosing a copy of Mr Brewster and Mr Loveday’s report. The letter of Mr Moore proceeded:

*“Copies of these reports are now held by yourself, Mr Brewster, Archdeacon Booth and myself. Two copies have been lodged with Mr David Burns of Bernays & Bernays, Toowoomba, who are acting in this matter for Mr Guy and in a sense for the school. . . . Mr Burns . . . . suggested that copies of the report not be circulated to Council members, but be left at the current level of distribution.”*

- 11.3 On 5 December 1990 Mr Burns of Bernays and Bernays wrote stating that the matter had reached a stage where there is a potential of conflict of interest between our representation of the school and of Mr Guy respectively. Thereafter Mr Guy was acted



for by Mr Burns and Flower & Hart acted for the School and the School Council.

### **Meeting of School Council 11 December 1990**

12.1 The Minutes record that,

*“Mrs Thomas’ letter of resignation was received with deep regret. Mr Brewster reaffirmed that both he and Dr Bailey had the interests of the child first and foremost in their course of action whilst recognising the presumption of innocence must apply to Mr Guy. Mr K. Addison, acting Registrar of the Diocese has requested that he be kept fully informed of any developments. ...*

*Mr Addison also asked for details on (AB). Mr Brewster was in the process of compiling a report for the Diocese.*

*It was agreed that parents be advised at the commencement of school in 1991 that Mr D. Wiggin would stand in for Mr Guy who was on extended leave. It was further agreed that any enquiries regarding Mr Guy and any matters which may become public knowledge be answered as follows. ‘Mr Guy is on extended leave and for both legal and industrial reasons the matter cannot be further discussed at this time.’*

*Mr Brewster advised that should Mr Guy decide not to return to the school it would be necessary to advertise as soon as possible for a replacement.”*

12.2 Thus the Council, at least at that point of time, had apparently decided not to reveal that Guy had been charged with sexual abuse of a student at the school

12.3 The School Council had apparently given little significance to Guy’s offer to resign. But Guy’s offer to resign was, in the circumstances, capable of being seen as confirmatory of CD’s complaint. If having been informed that an unidentified student had

complained she had been sexually abused by him, the accused teacher denies the complaint, but then or later offers to resign because “apart from his personal concern (he was) most concerned for the child and for the school”, this surely detracts from credibility of the denial. Significantly, this offer was made before Guy was aware of police involvement. This offer to terminate his employment, was much more consistent with a desire that the matter not go further, than the reasons Guy gave. Further, Guy surprisingly acquiesced in Brewster withholding the girl’s name, stating that he would prefer not to know anyway. If he had not sexually abused anyone, but was now confronted with an allegation that he had abused a girl, surely the first and obvious reaction was for him to ask who has made this allegation. Yet without more, Guy offered his resignation.

- 12.4 Not only had Guy been charged in respect of CD, he was on 18<sup>th</sup> December also to be charged with the sexual abuse of AB. When CD had seen the police, she also told them that she believed AB had been abused. In December the police rang AB at her parent’s farm, and asked AB’s mother whether AB was willing to make a statement to the police. AB agreed and made a taped and videoed statement to the police. Her ultimately unchallenged evidence in the Supreme Court as recorded above was of gross protracted sexual abuse by Guy.

- 12.5            There was never any justification for reserve in accepting the truth of the complaints of AB and CD. Both victims were drastically affected by their perception that their complaints were not believed. Eight years later, AB's parents were to their surprise and concern told by AB she intended to sue because that was the only way she would be believed. CD has told the Board that it was not until 2002, when in the process of settling her claim, her complaint was acknowledged and an apology was given, the burden of feeling she had not been believed, was lifted. Thus for the ten years of passing through the teens to adulthood, they were forced to live with the perception they were not believed. That it was no mere perception, but reality, was epitomised by the refusal of the Diocese to admit the abuse of AB, until the first day of the Supreme Court trial in November 2001. (see para 18.2)
- 13.1    Notwithstanding the force of submissions to the contrary the Board after considering all the circumstances considers the stated criticisms of the Headmaster and the School Council are justified.
- 13.2    The Board finds that the Headmaster, the Deputy Headmaster and the Council evinced an attitude of reserve, or refused to accept the complaints of the two girls that they had been abused, which attitude was perceived by the girls and their parents. The latter is all important. The Headmaster and the Council must bear the responsibility for having the girls and their parents feel that their complaints were not accepted.

### **The suicide of Guy**

- 14.1 Guy suicided, leaving a note in which he said that he loved a number of girls whom he named. It appears that none of the girls named have since complained of abuse, although at least two other girls have indicated grounds for complaint but have not pursued them. Significantly Guy did not in his suicide note, mention either CD or AB.
- 14.2 The Council was informed of Guy's death at the meeting on 18 December, and it appears that it was decided to keep the matter "in house" and to make the minimum of public disclosure. This conclusion is based upon the following.
- 14.3 On 21 December 1990 Brewster drafted a letter to be forwarded to parents and others associated with the school. This letter was not sent, but it is revelatory of Brewster's (and probably the majority of Councillors) attitude.

*"I write to you on a most sensitive issue, namely the circumstances surrounding the tragic death of our former Senior Resident Master Mr Kevin Guy.*

*It is now public knowledge that certain charges of moral misconduct were made against Mr Guy and that he was due to answer these charges, but such was his despair at having to face this ordeal he was driven to take his own life.*

*Whilst I didn't feel it is appropriate to publish all the details of the case, I do feel that it is important that parents should receive a balanced view of the situation from the perspective of those who work within our system.*

*Though he was a very private person those of us who knew Kevin Guy recognised him as being a hard working caring sensitive person who had a genuine concern and respect for kids and who loved this school and the work he so much*

*enjoyed, and was so deeply immersed in throughout these last traumatic days he categorically denied the alleged offence and was deeply shocked and hurt by the accusations and the gossip that regrettably and inevitably followed.*

*The staff, myself and many of the board of parents who have since made contact, find it difficult to believe that he was in fact guilty of any gross misdemeanor. In a valedictory letter to me before he died he stated that he felt his only crime was that he became too emotionally involved with the children in his efforts to do the best for them and bring the noblest out in them, which is something all of us need to be wary of before we cross that line between objectivity and subjectivity.*

*It had got about that there was a suicide note that was left and presumed was penned in his last moments of confusion. In this note some childrens' names were mentioned. This was not a self incriminating reference nor a confession of any sort, but merely a reference to those children whom he drew close to in terms of the care and counselling he gave to them over the last year or so. **The police have closed the case.** His family, his friends and his supporters among the parent body passed and present would wish him now to rest in peace. I hope and pray that even his critics will be charitably disposed towards **this young enthusiast who did so much that was good and positive for so many children in his care.** In dealing with situations of this kind it is our firm policy that we make every effort to protect the child (or children) at risk in every way necessary before we consider any adult that is involved. This policy was followed closely to the complete satisfaction of the school authority." (Emphasis supplied)*

- 14.4 That letter was reflective of the apparent attitude of Brewster, that there was real doubt as to whether Guy had been guilty of sexual abuse. Brewster in his evidence some years later, and in a recent letter written to the Board, said that whilst he had achieved the belief of the veracity of CD's complaints, he was constrained by the attitude of the Council and by legal advice from freely expressing his sorrow and concern to CD and her parents. Be that as it may,

the draft letter was in effect a defence of Guy, epitomised by the sentences emphasised.

- 14.5 The existence of doubt about Guy's guilt is confirmed from diary entries of Mr M.R. Lockhart, (then a senior partner of Flower & Hart, Solicitors, now a consultant). The following are extracts from the diary.

*"18/12/90- "Attending Mr Addison his call with material about another child. I said there was no indication of criminal activity in relation to this child. It appears Mr Guy did not attend Court this morning and it was thought he may have suicided.*

*Attending Mr Addison on his ringing up when he said the body of Mr Guy had been found.*

*21/12/90 – attending Mr Addison on his ringing up when he said he was sending a draft Head Master's letter to me for perusal.*

*Perusing draft. Attending Mr Addison by phone. Advising that the letter should not be sent and he asked me to prepare another draft.*

*24 December 1990: Attending Mr Addison by phone when I discussed the form of letter to be sent to parents.*

*Attending Mr Brewster on his ringing me up when he said he has had many enquiries. I said he should deal with them one by one and not by means of a general letter. **I pointed out that he does not have evidence against Guy and his letter should be more positive and aimed for the future.**" (Emphasis supplied)*

- 14.6 The letter as amended by Mr Lockhart was sent on 24 December 1990. This letter made no reference to the fact that Guy had been charged with a serious criminal offence against students before he suicided, but rather that his tragic death would be overcome by an approach by the school in the new year. The omission from the

letter, that consequent upon the complaints of female students in his charge, Guy had been charged with serious sexual offences, deprived parents of vital information. At least, the letter which Brewster had drafted on 21 December, did disclose that Guy had been charged, and had subsequently suicided. Albeit that letter fairly construed, manifests scepticism that the charges would have been made out, the essential facts were acknowledged. In contrast, the letter of 24 December gives not the slightest hint Guy had allegedly engaged in criminal sexual offences with students. The impression gained from the contents of this letter, is that it was hoped it would never be publicly revealed that Guy had been charged with criminal offences.

- 14.7 It was the opening sentence of the 24 December letter which offended many and particularly AB and CD's parents epitomised by the evidence of AB's mother,

*"I was absolutely disgusted and horrified at the first paragraph. It says "the tragic death of the senior resident master Mr Guy whose love and great effort for the school would be sadly missed ..." I thought it was obscene that that should be sent out to parents."*

- 14.8 Bereft as it is of any suggestion of wrong doing by Guy, this was a misleading document. That it was written, amended and circulated could only have been upon the basis that the authors of the letter did not accept the complaints of CD and AB, even if it were the case as Mr Brewster says he was not then aware of AB's identity. The fact that charges had been laid by the police in respect of the

abuse of both of these girls, was effectively ignored. Given even the possibility that the charges were valid, and of course they were, to write that the paedophiles “*great love and great effort for the school would be sadly missed*” was devastating to the parents of the girls involved and no doubt to the girls themselves. At the least, there should have been a neutral approach, but not one which impliedly rejected the girls’ complaints and extolled the deceased master, whom it was later indelibly established was a gross sexual abuser. This approach of the Headmaster and reflected in later decisions of the Council was a most inappropriate unfair and unreasonable handling of the complaints.

14.9 This was the first official statement from the School in respect of the abused girls. The parents of AB and CD were naturally distressed by the letter, because to them it could only be read as a rejection of their daughter’s complaints.

14.10 The decision to make public the fact a teacher has allegedly engaged in sexual abuse with a student, must be a closely considered decision. There are the conflicting interests of the teacher who has been accused, the interests of the complainant, and the complainant’s parents and the interests of other students and their parents at the school. Given the making of a complaint of sexual abuse not obviously vexatious or false, and which may constitute criminal conduct, a School authority should report the



complaint to the police. Otherwise, not only may a criminal offence go undetected and unpunished, further offences may occur. All those matters are a factor in the decision “to go public”. On balance the Board has no doubt that there must be a public statement, so that interested persons and parents in particular are properly informed.

14.11 Handbook distributed to all Queensland schools in 1986, “A Teacher’s Handbook for the prevention of Child Abuse” made it absolutely clear that **suspicious** of abuse and neglect should be reported to the Department of Children’s Services. On page 8 it states,

*“It is desirable that each school establish a school policy to be followed in cases of suspected child abuse and neglect. Each school should identify the appropriate child protection agency to be used in the event of reporting child abuse. ...”*

No such policy appears to have existed at TPS, and in any event, it was not invoked.

The guidelines state that while a report should be made to the appropriate senior officer or school principal,

*“it is also possible for the teacher to proceed with notification despite contrary advice from the senior officer.”*

The Children’s Services Act provided protection and confidentiality for the reporter.

The handbook emphasised that the teacher's role was not to investigate abuse but to report suspicions, irrespective of whether this course of action is approved by senior staff.

Under the legislation appertaining in 1986, reporting was voluntary rather than mandatory but teachers were protected by the Crown from civil action if they reported cases that were not confirmed. This section is important because if a teacher had reasonable suspicions that child sexual abuse was occurring and failed to report it,

**“to the appropriate agency, it would be possible for action to be taken against the teacher on the grounds of breach of duty or care”.** (Page 13)

On page 14, it is emphasised that, even after reports have been made *“the school still has a responsibility to offer a supportive environment to the child”*.

14.12 Thus it would appear that the school principal and deputy were unaware of the State Guidelines, or took no heed thereof and, lacking specialist qualifications and experience,

- (a) took responsibility for interrogating the accused (and witnesses),
- (b) made judgments about innocence/guilt;
- (c) failed to report the disclosure of abuse to the statutory authority;
- (d) failed to provide support for the victim; and

- (e) failed to heed the warning that “it would be possible to take action against the teacher on the grounds of breach of duty of care”.

14.13 Once a complaint of sexual abuse, not obviously vexatious or false has been made, the teacher should forthwith be placed on administrative leave. The further question follows as to whether fellow members of staff, the students and the parent body should be told of these facts. In the Board’s view, the safest course is to appropriately inform all persons, who have a real interest in knowing the affairs of the school. Obviously, a parent who has children under the control and supervision of a teacher who has been charged with sexual abuse, should be informed of that. That the relevant child is no longer subject to any potential danger from that particular teacher is provided by the fact of the teacher being placed on administrative leave. It might be said, that the placing of the teacher on administrative leave is all that is required to be done, so as to adequately protect the interests of children under that teacher’s charge and supervision. But the parents of children who have been in that teacher’s charge and under that supervision are entitled to be told. This is because it may be, that those other students have numbered amongst them students whom the teacher has also abused. Naturally in that situation, parents should be sensitive in raising with their children the issue of child’s relationship with the teacher.

14.14 That risk the Board considers can be overcome by a proper counselling of parents and the other students. The contrast between telling other parents of children in the class, that the teacher has been charged with sexual abuse of another student in that class, and the implications of saying nothing dictates that parents should be informed.

14.15 In placing a teacher on administrative leave it is recognised that irreparable harm may be caused if it turns out that the complaint is unfounded. But because the paramountcy is to ensure the protection of the children, the balance of convenience dictates the imposition of administrative leave.

### **Letters from Parents and Others**

15.1 Set out hereunder are letters which were written to Archbishop Hollingworth, exhibiting concern held by the writers at the way in which complaints were being handled. On 25 December 1990 Sister Christine Munro wrote to Dr Hollingworth stating, inter alia:

*“My reason for writing is to voice my deepest concern at the manner in which the Head Master and the school council are handling the current crisis resulting in the tragic suicide of the Resident House Master Kevin Guy. I attended the staff meeting where the Head Master addressed all the staff, and I believe, to the point that they are being deceived. I am concerned about the parents and their children who are entrusted to our care. Can we now, afford to ignore the fact that some of these girls may have been abused by this man. I and others among the house staff have been quite concerned and very uneasy about him for some time. I told*

*Mr Brewster of my concern, but only when all this happened – just before the end of term.*

*Firstly, I would like to say that your address to us on speech day at Prep was truly inspiring – the best and only one I will remember after twelve years of association with the school (six as a parent and six years on staff as a nursing sister).*

*I have now agonised for a week over whether I should send this letter, but after attending the midnight service in Caboolture, with Bishop George, and reading your words on “happiness” in the Bulletin, there is no doubt in my mind that I have a responsibility to do so.*

***At this stage it appears, there could be a cover-up. I simply ask could you please see that the truth is made to us all as soon as possible. The future of the school may be at stake. . .***

*I have not mentioned this letter to Mr Brewster, so I would prefer that it remain confidential.” (Emphasis supplied)*

- 15.2 It was the publication of this letter given in evidence by Mrs Munro at the Supreme Court trial, which set off a massive media coverage, which in turn led to the appointment of this Board of Enquiry.

### **15 January 1991**

- 15.3 CD’s Mother wrote a letter to Archbishop Hollingworth, inter alia:

*“I am hoping you can bring your sensible down to earth approach to the school’s current situation, where a web of silence is being woven, at our daughter’s expense.*

*Recently my daughter made allegations of sexual abuse against the Senior Resident Boarding Master Mr Kevin Guy because of concern of the welfare of a fellow student. These concerns were well founded, as she too was a victim.*

*I had a number of interviews with Mr Brewster, the Head Master, and also his Deputy, Mr Loveday, **and was extremely perturbed by their insinuations of doubt concerning my daughter’s integrity and judgment.** Mr Brewster seemed very reluctant to take any action against*

*the accused, there being only a child's word against his, and citing the probability of Union action should he do so. The fact too, that some years ago a similar case, necessitating police interviewing children and staff concerned considerable distress.*

*Also Mr Guy's previous excellent record, the obvious damage that would cause to his career and his apparent shock when faced with the charges. This I could understand, BUT felt very strongly that we were being warned against taking any action.*

*Mr Brewster had conferred with Archdeacon Booth and Professor Bailey, both members of the school Council, and out of this emerged the one plus of the whole sorry saga. The recommendation that we see a counsellor."*

*The case was to have gone to Court where he would have been faced with additional charges concerning the other pupil. Mr Guy, chose instead, to take the coward's way out and took his own life. However he left a letter plus a list giving the names of fifteen pupils he had sexually abused during his time at school. With his death the police case came to a close.*

*I am however particularly concerned with the following points:*

(a) *considering his position gave him overall supervision of all boarders, why wasn't Mr Guy immediately stood down from the staff in order to safeguard the welfare of all children in the school's care;*

(b) *[. . . the last line of this page cannot be read] it continues-*

*"Police interview and subsequent arrest. It seems to be a conflict of interest especially as the accused has had several days in which to seek his own legal representation."*

(c) *following the suicide, it must have been evident to Mr Brewster, that my daughter's accusations were well founded. Why then was no attempt made to contact the two families who had laid charges. I appreciate that the school's lawyers probably advised against this, BUT which*

*comes first the welfare both mental and physical of the child or the good name of the school. Surely both are closely connected.*

- (d) *During interviews with Mr Brewster I stressed that on NO account was my daughter's name to be made public. I strongly suspect this has been violated . . .*
- (e) *A letter has been sent by the school to parents regretting the tragic death of Mr Guy with reference made to all he had achieved at the school. Why did the school not adopt an open attitude and inform all parents of the manner of his death and the reason for same. Because we as parents entrust the care of our children to the school we are entitled to this information. Remember not only did Mr Guy betray the trust of the school, but more importantly, that of the children and their parents. . . .*

The letter then continued to make a number of other complaints and comments including –

*“We hope that our two children can continue their education in Toowoomba, one to continue on at Prep, the other moving into secondary. Should there be the slightest glimmer of action, verbal, physical, innuendo, or by any other means be found to have been taken against either of these children, then I will seek to bring the full weight of the law against the church and the schools they attend. At present I have an article in the pipeline which I hope to publish. However, when, and just how detailed this article will be largely depends on the future attitude of the school and its controlling body the Anglican church.*

*After enduring weeks of sexual abuse, my daughter had the courage and maturity to break free from that awful web of secrecy. If she had not done so the cycle would have continued indefinitely. Why should she perhaps be forced to go through an even worse hell. Despite all she has gone through, my daughter is very loyal to Prep. Loyalty is one thing, but when it is carried to extremes, to the exclusion of rational thought, it induces a great sickness of mind, similar to that apparent in Mr Guy.*

*When the school finally acknowledges that sexual abuse DID occur within THEIR precincts and by a member of THEIR staff then perhaps the healing process for all can begin.”*

## **The Parents of AB**

### 16.1 The parents of AB wrote to the Archbishop

*“Enclosed please find copies of letters we have written to Mr Brewster, the Toowoomba Preparatory School Council, Prep School PNC and to Bishop Charles. As you can imagine we are appalled by the huge cover-up that seems to have taken place over the death of Mr Kevin Guy. Our daughter was one of the girls that Mr Guy had abused and further charges would have been laid against him.*

*We feel that Mr Brewster should have at least informed all parents of his death and the reason for it.*

We feel that Mr Brewster and the school Council have handled this situation very badly and nothing less than their resignation should be accepted.”

### 16.2 In the letter to Mr Brewster it is stated, inter alia:

***“We have to tell you that on December 7<sup>th</sup> 1990 we were contacted by the Toowoomba Police Juvenile Division and we were asked to question AB about certain things that had happened at Prep.***

***After speaking to AB we then arranged for an interview with two police officers from the Toowoomba Juvenile Division at the Goondawindi Police Station and as a result further charges would have been laid against Mr Guy on December 18 when he was due in Court. When we phoned the Juvenile Division to hear the results we were told that Mr Guy had committed suicide, so we find your opening paragraph which states in part, “The recent tragic death of our Senior Resident Master Mr Kevin Guy whose love and great effort . . . etc.” of little comfort. Further we find almost obscene that AB went missing from the dormitory at night, and we were not informed, especially when we received a letter from AB indicating that she was upset about something and I had contacted Mr Guy on that Friday afternoon to tell him that AB was upset and that I would be in Toowoomba on that Saturday afternoon to see***



*her and sort things out, so we would like an explanation please.*

*We also think that Mr Guy should have been asked to take leave from the school as soon as these allegations were made against him, he most certainly should not have been at the school for the remainder of the term thus keeping AB and the other girl concerned exposed to him, we can only assume from this action of yours that the "school's good name" was a paramount importance to you and the safety and welfare of the girls a very poor second.*

*We have given this matter a great deal of thought and we have come to the conclusion that you have only one course left to you and that is that you should resign from the school as soon as possible, thus letting a new broom sweep clean.*

We would also advise you that we don't for one minute hold Mrs Adermann or any of the staff from Arnott House responsible in any way, we have nothing but the highest regard for Mrs Adermann and the staff." (Emphasis supplied)

16.3 These letters from the mothers of AB and CD do them credit.

Naturally, the letters reflect their anger and concern at what had occurred, about which they rightly held no doubt. The Board has spoken with them, and they are conspicuously reasonable and articulate women who were affronted naturally by the fact of their daughters having been abused, but very much also by what they reasonably perceived as doubt of their girl's credibility. Their attitude is epitomised by what AB's mother wrote to the Board,

*"...If there had been unconditional recognition of the fact of the abuse and an apology for it, that may well have been the end of the matter, and (my daughter) would have been accommodated much better the position."*

It goes without saying that the parents of AB and CD were aghast at the failure of the Headmaster and others at the School to take

reasonable care for the safety of their children, as the verdict of the jury so emphatically conveyed was the fact.

## 25 January 1991 (D15)

16.4 Stubbs Barbeler Grant, Solicitors of 33 Queen Street, Brisbane wrote to the Head Master, Toowoomba Preparatory School:

*"We have to advise that we act for (CD's parents) who have consulted us in relation to their concern for their daughter CD and their belief that yourself and the school have not properly discharged to CD and other students at the school who were interfered with by the late Mr Kevin Guy, the necessary care, support, counselling and apology that we and our clients feel should be forthcoming. . . .*

*We would point out that in coming forward with her story CD must have done so with great hesitation and a belief that her own conduct and behavior would also be the subject of some censure. However, she felt that the actions of the deceased teacher was such that this was secondary to a necessity to stop such deplorable and criminal conduct from continuing. For a child of twelve years to have to wrestle with this dilemma, and then to be subsequently confronted with the suicide of the teacher, we feel requires the school and yourself to give to CD, the maximum support, assurance and counselling that is available and similarly to her parents. . .*

*Our clients seek from you, a response to their concerns expressed herein and an indication that the conduct of the school and yourself will be prepared to take. Our clients feel an appropriate letter to all parents of children named and to the parents of children who may have come under the influence of the teacher is, in the circumstances, appropriate. Such a letter should firmly indicate responsibility and concern on the school's part and not be in the nature of a witch hunt, or a guilt suggestion in so far as the victims are concerned. . . . Our clients in the circumstances reserve their rights in the matter but they are anxious rather than to pursue legal action, to seek redress for what they feel is an injustice and less than caring treatment on the school's part and to have the matter rectified and tidied up in a proper and caring basis so that the future psychological impact of these events on the children can be, as far as possible by careful counselling and discussion minimised."*

16.5 That letter did not get a response.

### **25 January 1991 – Meeting of the School Council**

- 17.1 From the draft minutes and the final minutes of this meeting, there must be inferred that a majority of the School Council members, did not choose to believe that abuse had occurred, and consequently the complaining students were not given the acknowledgement, apology and support, which they should have been.
- 17.2 There was no real reason to doubt that abuse had occurred in this case. Instead of treating the complaints with apparent reserve, the School Council should have been astute to ascertain in detail, what had happened and to then take appropriate action, including the immediate provision of counselling for the Complainant.
- 17.3 This was vital given that not only had they been abused but Guy had suicided. Given that the suicide had occurred, and the police had “closed the file”, the School Council should have deplored the conduct which had occurred. If there was doubt as to whether the abuse had occurred, such doubt should surely not have continued in the face of the complaints made by the two girls to the police, let alone CD’s complaint to Brewster and the other suspicious circumstances surrounding that complaint.

## **The Basic Finding**

- 18.1 The Board finds that the complaints of CD and AB were not fairly, reasonably and appropriately handled. The pervasive theme (express and implied) in the conduct of Brewster, Loveday, the School Council and the Staff was reserve or scepticism in accepting the validity of the girls' complaints, and the desire to keep the matters "in house" as much as possible, so as to protect the reputation of the School.
- 18.2 With respect, it seems to the Board that the whole attitude of the Council, the Head Master, and other officers of the school was contrary to what it should have been. Briefly put, the welfare of the abused students, was subordinated to considerations as to what was seen to be best for the reputation of the School. It seems that this was perceived by the jury, and reflected in its large award of exemplary damages. In that context, it can be noted that, it was not until the first day of the trial at Toowoomba in November 2001, that counsel on behalf of the Diocese admitted that AB had been abused. Thus having made the decision she was going to sue because "it is the only way I will be believed", the issue of her credibility was kept in contest during the stressful months and years of litigious process.

## 25 January 1991 – Meeting of School Council

19.1 There is reference in this meeting of the school council to a meeting with the SCAN unit on 23 January.

That is important because at the SCAN meeting it was made clear by Dr Knox, the Chairman of SCAN that he believed that the two children had been abused. The agenda of the special meeting of the school council for the 25<sup>th</sup> of January states:

*“Purpose of meeting.*

- (a) To determine action to be taken by the school to address unresolved matters arising from the allegations made against Mr Guy.*
- (b) Welcome to Dr Ian Knox and Mr Max Lockhart.”*

19.2 The minutes of the meeting are available both in draft and final form, and there seems no reason to doubt that these provide an accurate record of what was said and done. However, some members of Council, and particularly Mr G. Fox contest the accuracy of some of the minutes.

19.3 This was a meeting at which the opportunity was available for the Council to resolve to take positive action in respect of the provision of counselling and support for the girls. If the Council had believed that the abuse had occurred, one would have expected that no stone would have been left unturned to ensure that the abused students were given the fullest apology, sympathy and support, including meeting the costs of counselling. That this did not occur is the strongest evidence there was doubt as to the validity of the

complaints. The Board has no doubt that the members of council are worthy and responsible people. Accordingly, had they believed that these two young girls had been grossly abused by a Master, into whose care and custody these children had been placed, their anger and concern would have known no bounds.

### **25 January 1991**

19.4 In draft minutes there is a reference to the report/advice from Dr I. Knox, SCAN unit Toowoomba which employs specialist experts in child sex abuse cases. Dr Knox advised that,

*"his group was informed by the Juvenile Aid Bureau of the existence of a note written by Mr Guy and found beside his body which made mention of past and present girl students of the school. . . .*

*Dr Knox advised that Mr Brewster had shown him a draft of a proposed letter to parents covering the issue of the note written by Mr Guy and the mention of certain girls. Dr Knox was advised that the two children mentioned in the charges against Mr Guy were receiving counselling from Mrs J. Connolly in Toowoomba."*

19.5 There is then reference to Mr Brewster reporting on his meeting with the SCAN unit on 23 January. The draft minutes recorded it was resolved that,

*(a) Mr Brewster forward urgently a letter to the parents of those children mentioned in Mr Guy's notes;*

*(b) Mr Brewster's letter include a reference to assistance available from the SCAN unit and the Department of Family Services;*

*(c) that Mr Brewster speak to all the children at the school at the earliest opportunity. . .*

*It was agreed that the matter of whether a contribution be made towards professional fees arising from the recommendation for counselling made by the school to the parents of the children concerned be given further consideration at a future meeting of the Council."*

19.6 There appears on a further draft a notation,

*"Sent by Peter Moore for our comment.  
I have concern about the style of reporting. Is all the detail given necessary in the official minutes of the meeting."  
(In the margin there is a handwritten) 'no'."*

- (a) Mr Brewster's report on his meeting with the SCAN Unit on 23 January 1991 referred to the suicide note, copies of which were then distributed to members present.

*"No self incrimination was evident in the letter. ..."*

- (b) In general discussion Dr. Knox advised,

*"that he was comfortable with the letter (to be written by Mr Brewster to parents) but suggested it should include a reference to SCAN and an indication from the school of its proposed course of action.*

*The SCAN Unit **had no doubt that the two girls were molested** as both girls now had emotional problems and are undertaking counselling. ..."  
(Emphasis supplied)*

- (c) *"Mr Lockhart advised parents should be informed although this discussion is based on an assumption that Mr Guy is guilty of the charges. Mr Lockhart stressed Mr Guy had firmly denied the allegations and there was no indication of misconduct in his letter. The facts are not known. . . ."*

*it was to be remembered that Mr Guy was faced with two allegations and no more.*

***Dr Knox replied that Mr Guy's suicide note did name other girls and therefore a reasonable degree of suspicion did exist.***

*Mr Lockhart advised there was a lack of credible supporting evidence and school Council is not in a position to make a judgment as to Mr Guy's guilt or otherwise." (Emphasis supplied)*

(d) Mr Fox was recorded,

*"that he was not aware of any corroborative evidence to support allegations against Mr Guy and he felt that the presentation of a case against Mr Guy may well have failed in the Court for this reason.*

*He expressed concern that whilst the letter alluded to some girl students past and present does follow up by Mr Brewster have to be extended to all past girl boarders during Mr Guy's tenure. He suggested that if no substance existed, only suspicion, would the question of the children cause difficulty with girls which may not otherwise have existed. Dr Knox advised that all was dependent on feedback from the girls in question. . . .*

*Mr Fox mentioned that Mr Guy was obviously popular with the children and there had to his knowledge been no indication of any fear or apprehension of Mr Guy. Mr Fox asked Dr Knox if he considered that the school could have acted differently given the information available. Dr Knox replied in the negative.*

(e) *Mr Lockhart referred to the suicide note and reiterated that there was no indication of any improper conduct and therefore, no inference should be drawn that any unnamed children are also involved.*

*Mr Lockhart agreed with Mr Fox that on the basis of available information it was most probable that Mr Guy would have been found not guilty of the charges. . . ."*

(f) *"Dr Coman asked should the school offer to pay the counselling costs of the two children mentioned in the*



*charges, to which Mr Lockhart replied he felt there was no need for this action and it would not be of benefit to the school."*

(g) After Mr Lockhart had left the meeting,

*"Dr Coman asked if Mr. Brewster considered that CD's mother and AB's parents expected the school to pay the professional fees of J. Connolly."*

*Mr Brewster advised that whilst he was sympathetic to the proposition he did not commit the school to this expenditure.*

*Mr Fox suggested that should the matter of payment of professional fees arise then the issue should be referred to Mr Lockhart for advice."*

19.7 Those draft minutes apparently prepared by Mr P.F. Moore record the clear reserve or scepticism which Mr Fox and Mr Lockhart and probably other members of the council had with respect to the complaints of abuse. This is to be contrasted with the SCAN unit which as reported by Dr Knox, *"had no doubt that the two girls were molested as both girls now had emotional problems and are undertaking counselling"*. Mr Fox contests remarks attributed to him. On the other hand Dr Coman refers to such advice by Mr Fox and Mr Lockhart. Dr Knox of SCAN has been apprised of the record of his involvement in these meetings, and accepts it as substantially accurate.

19.8 It is unnecessary to decide the precise correctness of the Minutes, and the draft minutes. It is beyond dispute that both girls were grossly abused. The statement made by CD to the police, the

particulars set out in the Statement of Claim, and the unchallenged evidence of AB given at the Supreme Court Trial cogently demonstrate this. For whatever reason, there appears even now a reluctance to accept this was so, or at least to say it was not reasonably able to be ascertained in 1990.

19.9 Mr Lockhart had stressed that “Mr Guy had firmly denied the allegations and there was no indication of misconduct in his letter”. Presumably this was a reference to a denial which Guy made to Brewster and Loveday, and that Mr Guy said nothing in response to the allegations put to him, when interviewed by the police.

19.10 It should be noted that the official minutes contain no reference to Dr Knox’s statement to the effect that he was satisfied that the children had been abused, nor do those minutes record the comments of Mr Lockhart and Mr Fox as appear in the draft minutes.

### **Parents and Friends Meeting 31 January 1991**

20.1 Before the meeting Ms Joy Connolly wrote to Mr Fox as President asking him to read a letter to all present at the meeting on 31 January 1991. The letter stated, inter alia:

*“I am sure most of you who doubt are unaware of the huge amount of additional stress this is causing the victims and their families. For too long crimes of this nature have continued to go undetected or unreported as a result of the above thinking.*

*This school can be proud that it had two year seven students who had enough courage to speak up and put an end to this abomination. No one could have foreseen that an abuser would choose to take his own life. Always when suicide occurs it is the responsibility of the person who commits the deed. No one else is ever to blame. Always when an adult commits a sexual offence on a child it is the responsibility of the offender, never that of the child. All children by nature are affectionate. If an adult responds to a child's mood in a sexual way then that is the responsibility of the adult not the child. . .*

*These year seven children aged 12 and 13 through abuse and the subsequent suicide now have to deal with two enormous issues. Issues which are a struggle for most adults namely, sexuality and death. . . .*

*These young people will need the freedom to be able to disclose such events. They will need sensitive treatment to avoid the aftermath of sexual abuse; self blame, self hatred, helplessness and depression. They will need to know that they can tell of any abuse in an accepting environment. If there is any fear that their disclosure will increase current furore then there is every likelihood that they will carry their secret and shame into their adult relationships. Sexual dysfunction is a high predictor of marriage breakdown.*

*The two girls who have courageously spoken up are deserving of the highest accolades of praise. Nobody enjoys speaking out and being embarrassed. Teenagers hate it.*

*These girls have already suffered enormously. They both have my total support and my dedication to protect them from further abuse.*

20.2 Copies of that letter were apparently sent to Archbishop Hollingworth, Dr Peter Coman, Dr Ian Knox, Dr Gary Persley, Archdeacon Booth, Mr Bob Brewster, Mr Mike Norris, parents of girls concerned, both girls, Toowoomba Prep School Staff Association, Mr Keith Murdoch, and Detective Senior Constable David Seng.

20.3 There has been some criticism of Ms Connolly, because it was said she appeared to be acting more as an advocate than as a detached psychologist. Be that as it may, however, the sentiments and opinions expressed in that letter were in the Board's view entirely apposite. She cogently identified the effects that the doubting of the girls had and would have on them. Mrs Conolly has advised the Board she does not wish to add to her evidence given in the Supreme Court, but she has provided recommendations as to the handling of sexual complaints which will be given due consideration by the Board when considering and making recommendations as to future procedures.

### **1 February 1991**

21.1 Mr Fox wrote to Dr Coman stating that he "enclosed copies of letters which he proposed to send as President of P & F and invited the comments of Dr Coman. Dr Coman noted:

*"I support your request to initiate a process of information and attempt to identify clearly the sources of concern expressed at the meeting yesterday."*

21.2 Mr Fox composed a number of draft letters, though it is unclear whether these letters were ultimately sent to Mrs Connolly. Mr Fox wrote, inter alia, in respect of Mrs Connolly's letter read to the Meeting.

*"(a) The letter was received by me only a matter of minutes before the commencement of the meeting and I did not have sufficient time to consider its contents carefully. No reason was given for the delivery to me of the letter at this stage."*

- (b) *“The letter in its third paragraph is a statement of guilt on the part of the accused, **which as you will appreciate the teaching staff at the school find most offensive. You will no doubt be aware of concerns expressed by the members of the teaching staff that the school authorities had disregarded the rights of the accused in favor of the complainants.** For my own part I have never been blessed with sufficient insight to determine to my complete satisfaction guilt or someone’s innocence, particularly on the basis of evidence from one party only. Indeed after many years of practice I have found that such an enquiry detracts from rather than enhances the objectivity necessary to provide adequate assistance. I appreciate however the demands and constraints of your profession may well differ from mine . . .*

*Accordingly ... I made introductory comments relating to the primary concern for the children and their need for continuing support, my views in these areas coinciding with your own. During the meeting I was advised by the mother of one of the children that she was aware of the letter, wished it to be read and felt it would have some therapeutic benefit for her daughter. The Head Master on behalf of the teachers, indicated that in the circumstances he had no objection to the letter being read and accordingly this was done.*

I am concerned by the comments of a number of people of a perceived cover-up on the part of school authorities and the perceived lack of support for the child. . . . “ (Emphasis supplied)

21.3 In a draft letter to Dr Persely, Mr Fox said,

*“Thank you for your attendance at the recent P & F meeting and in particular your explanation of the role of the SCAN team. I do not profess any great familiarity with the workings of this body, and your explanation and comments were clearly of support and assistance to a number of rightly concerned parents.*

*I am concerned with your comment that it appeared that the interests of the girls in question have been treated by the school authority as secondary to the name of the school in their desire to avoid litigation (please correct me if I have misinterpreted your comments). This is a belief which is*

*clearly held by a significant number of people. I am anxious to establish clearly the factors giving rise to this belief with a view to remedying any matters which may require attention and providing what comfort may be possible for the parents and children involved and also with a view to establishing procedures that should such unhappy events occur in the future, such concerns should not arise. . . .“*

21.4 In a draft letter to AB's parents Mr Fox wrote,

*“Thank you for your letter of January 16. It was apparent at the last P & F meeting that your views are shared by a significant number of parents. I am anxious to ensure, so far as possible, that any defects in the handling of the present matters are remedied as quickly as possible, and procedures be set in place to ensure that should similar events occur in the future, they are handled in the best possible manner. Would you be able to contact me to assist in this.”*

21.5 The tenor of those letters is that the guilt or otherwise of Guy is and remains in question. This is epitomised by the phrase that the “teaching staff at the school find most offensive” a statement of guilt on the part of Guy.

22. On 25 January 1991 Brewster composed a letter to AB's parents, which however was not posted until the 30<sup>th</sup> of January 1991 and therefore would not have been received by the addressees until at least 1 February.

*“I write to tell you how deeply shocked I was when I heard late last week that AB was in fact the subject of the second charge made against Mr Kevin Guy. Despite opinions to the contrary, I had no official indication before that time that it was she who was involved.*

*I tried to reach you by phone last Friday but I could not get through. I tried again Saturday morning and got Terry. I left a message with him about the possibility of you contacting me but I quite appreciate you may not be either in a position to do this and indeed in the frame of mind to want to. Hence*

*I take this opportunity to offer the following comments for you to consider.*

*You will of course know that I was among the group looking for AB when she went missing on that fateful Friday night. When she returned Mr Guy presented me with his account of what happened and why. I did at that time basically accept his story as I had no indication of any presumed misconduct by him prior to this. I did however with great emphasis leave him in no doubt that alone and at that time of night conducting his reported interview with AB was unwise and must never occur again.*

*Three days later the earlier incident concerning the other girl was reported to me. Following that I had a discussion with a few year 7 girls who were concerned about Mr Guy's association with AB. I drew from them as much information as I could and there seemed to be nothing concrete to add to what I already knew. Notwithstanding, I was sufficiently worried about the whole affair to speak to AB about it. After which I hope was a gentle lead up, I asked her specifically whether anything that Mr Guy either said or did on that Friday night worried her, and she replied in a seemingly relaxed and sincere manner that she found Mr Guy very helpful in putting matters right. This reaction I am afraid precluded further actions on my part hence when you came down to see AB shortly afterwards the outcome of the visit seemed to give the girl greater peace of mind. I made the assumption that you found everything to be in order. This plus the fact that AB appeared to finish the final week of school in a happy and relaxed mood indicated to me that I need not pursue the matter any more. On clearing out Mr Guy's open mail after the suicide, I came across a letter that you had written to him, apparently only a few days before, and although I did not examine it closely, I got the impression that it was a friendly letter of appreciation which had the effect of providing me with some degree of comfort at the time.*

*Subsequent events have strongly suggested that there may have been other matters to which I was not privy, and for AB's sake this distresses me. One can only do what one considers is right and appropriate at the time. Hindsight often declares otherwise.*

*I offer you and your family and AB in particular, my profound sympathy in your anxiety. I hope and pray that with time and sensitive counselling these anxieties may be eased. In the meantime we are taking every precaution to ensure as far as possible that such concerns do not arise in the future. ..."*

## 5 February 1991

23.1 Flower & Hart (Mr Lockhart) wrote to the Educational Consultant for the Anglican Diocese in Brisbane, presumably Dr Coman, and this letter is reflective of the caution that Flower & Hart were adopting in relation to making any suggested admission or acknowledgement of wrong doing. For reasons previously given, and to which further attention will be given below, the Board considers that it would have been appropriate for the school, through its representatives, to have freely acknowledged that the children had been abused, (which was undoubtedly the fact,) and could have been verified by the taking of simple investigative steps. It would have been much better for all concerned, and including the interests of the school, if it had been stated that the school deplores the fact of the abuse by Guy the occurrence of which was completely unsuspected by the other teachers including the Head Master, and apologises to the victims for the hurt they have suffered from a master of the School, and offering support and assistance including counselling.

23.2 The letter of Flower & Hart read, inter alia:

*"We acknowledge receipt of your facsimile transmission yesterday with which you enclosed a draft of the minutes of the meeting held in Toowoomba on the 25<sup>th</sup> ult. together with a draft of a letter prepared by Mr Brewster apparently to be sent out to parents of the children at the school. . . you will recall there was some discussion at the meeting as to whether an approach should be made to all the parents of children at the school and we expressed our view that this should not be done. We adhere to that view and we do not think that Mr Brewster's draft letter should be sent out. We*



*do not think that it is in the best interest of the school to write to parents in the terms expressed in the fourth and fifth paragraphs of the letter. It does not seem to us that the apology contained in the fourth paragraph and the inference that the school and administration had mishandled the Guy affair are calculated to promote the best interests of the school. . .”*

23.3 Notwithstanding Mr Lockhart’s view that it would be preferred that the letter to the parents not be sent, it was agreed (with amendments which Mr Lockhart made to the letter) that it should be sent. On 7 February Mr Brewster wrote to CD and AB’s parents stating inter alia,

*“Please find enclosed a copy of the letter that we intend sending out to all parents of children who were at Prep last year and who are enrolled for 1991. The letter will also go to parents whose childrens named appeared in the note that Mr Guy left behind.*

*This letter was developed after necessary consultation with the school authorities and is couched in terms that we hope will be acceptable to you and at the same time be fair to everyone else who has been involved in the entire crisis.*

*To the best of my recollection the letter embodies all the features that you felt was important to be included as I recall were as follows:*

- 1. A precise description of the charges laid against Mr Guy.*
- 2. A reference to the assumption that he took his own life. (Pending the Coroner’s verdict of the forthcoming Inquest).*
- 3. A clear reference to the girls mentioned in the note found in the car which is followed by the subsequent course of action taken by myself and the SCAN unit.*
- 4. An emphatic statement confirming support for the two girls who spoke out.*

*The upper most thoughts in the minds of the diocesan authorities, the school council, the staff and myself is to do*

*our best to create a healing climate following on the traumas that have effected the girls, yourselves and indeed the whole school community. We hope this letter will be an acceptable precursor to the development of such a situation."*

#### 23.4 The amended letter to the parents read:

*"I write to you in response to a number of requests which I have received to clarify the circumstances surrounding the death of our former Senior Resident Master, Mr Kevin Guy.*

*Mr Guy was charged by the police on Friday, 30<sup>th</sup> November 1990 with unlawfully and indecently dealing with a minor. The subject of the charge was a girl boarder at the school. Mr Guy was required to appear in the Magistrate's Court on Tuesday 18<sup>th</sup> December 1990. Prior to that date the police laid a second charge of a similar nature against Mr Guy involving another girl boarder who attended at Prep. Both charges related to events which were alleged to have occurred during 1990.*

*On the morning of Tuesday 18<sup>th</sup> of December 1990, Mr Guy's body was found outside Toowoomba. Beside his body a note was found written in his hand writing. In it he expressed affection for twenty girls whom he named. He did not however in any way indicate that he had an improper relationship with any of them. The identities of the children mentioned in the note were not made available to the SCAN until the 17<sup>th</sup> of January 1991, when at my request, the Suspected Childs' Abuse and Neglect Unit (SCAN) Unit, gave to me a copy of Mr Guy's note. After the meeting with the SCAN Unit and one meeting of the council a procedure for approaching these parents was agreed upon. Since that time I have made contact with all parents of children mentioned in the note. These parents have been informed of the situation and have been advised of services which are available to them if they feel there is a need for them to seek counselling assistance. **We at the school have the highest regard for both girls who made the original complaints. They should not be the subject of gossip or innuendo from those who cannot be aware of all the circumstances surrounding this tragic affair.***

*We have all been through a harrowing time, being involved in the worst sort of situation that can beset any school. This situation was approached in what we perceived at the time to be an appropriate and correct manner. We hope you will understand that each step taken by the school has been*

*taken after due consideration and with the best interests of our children in mind.*

*The future of this school is precious to us and we are now desperately want to return to stability and carry on our caring role. We can only do this with the help and good wishes of its supporters. Let us hope that we can put it all behind us now and take full advantage of the salutary lessons learnt.”*  
(Emphasis supplied)

23.5 The emphasised words demonstrate the failure to unequivocally accept that the girls were abused. It was not an apology to the girls, because they had been abused, but a request for sympathy because they made the original complaints. To say that the school has the highest regard for both girls “who made the original complaints”, (but) ... “should not be the subject of gossip or innuendo” is at best ambiguous. The option for the objective reader to construe that the complaints were false, was left open. The letter does not state, as it should have, that the deplorable fact was that these two young girls had been grievously abused, by the Resident House Master, and for which (without admitting any legal responsibility therefor) the School profoundly apologises.

### **The Staff Response**

23.6 On 13 February 1991 there was published a staff response to the outcome of the P and F meeting concerning the Guy affair. That response read, inter alia:

*“At the P and F meeting held on Thursday 31<sup>st</sup> January 1991, a letter written by a local psychologist, Mrs Joy Connolly, was read out to those assembled. . . .*

*We are concerned that this letter was read at a public meeting which we were unable to attend, owing to the nature of our duties, before we knew of its existence or were aware of its contents. However well meaning the motive for writing and distributing this letter may have been, we consider the implications regarding our attitude to pastoral care to be incorrect and ill judged.*

*We have endeavoured to maintain a balanced approach to this issue, feeling deep sorrow both for the loss of Kevin and for the effects on the children involved. We have refrained, as requested, from becoming embroiled in the present controversy, but because of this letter we have resolved to state our position publicly.*

*In accordance with the parents' wishes, the Head Master did not disclose to the staff the names of the children, although some staff members asked him to for sensible reasons. Despite his adherence to the parents' wishes, the names of the children were revealed by outside sources to some staff members. These staff members kept the information confidential. Since we have not been officially informed we have not been in a position to support the girls. We reject the implication in Mrs Connolly's letter that we have sought to challenge or undermine the girls' credibility. It seems that the schools' administrators are trying to obey the rules which some others are not. It seems as though attempts are being made to fragment the previously cohesive school community.*

*We would like to be allowed to get on with our work, while this controversy festers teachers are teaching, children are learning, and life at Prep is returning to normal.*

*This wound should be allowed to heal.*

*When anyone else with something to say has done so at this public forum that should be the end of it.*

*Jesus Christ said that a house divided against itself cannot stand. We must not let a "root of bitterness" grow into a cancer that destroys this school. The time has come for forgiveness and peace making.*

*At our recent conference we resolved to make this a year of communication, a year of closer and warmer relationships with all members of the school community. This remains our goal. We invite you to join us in this endeavour. **We care.***

*Above all, let this be clearly understood. We stand with the Head Master."*

23.7 The letter leaves open the issue of whether Guy was guilty, as the statement,

*"we have endeavoured to maintain a balanced approach to this issue, feeling deep sorrow both for the loss of Kevin and for the effects on the children involved"*

illustrates. There is no clear statement that the children had been abused. The letter could be construed as meaning that it was Guy's suicide which had an effect on the children involved. By this time, the Staff should have decided whether abuse had occurred, and in which event, this should have been deplored and the overwhelming statement should have been concern for the children. Alternatively, if the Staff were unclear as to whether abuse had occurred, they should have said nothing.

### **Concerns of other Parents**

24. Other parents including Mrs R wrote to the Archbishop speaking of grave concern about certain matters connected with Toowoomba

Prep. She wrote, inter alia:

*"I write because I feel we are directly involved in a matter of Kevin Guy's suicide, and also because I am very concerned about aspects of Mr Brewster's handling of this affair and also the church's handling of the matter.*

*My elder daughter's name was on a suicide note found with the body of Kevin Guy.*

*Mr Brewster informed us of this on the 29<sup>th</sup> of January, which was the day we took our two little girls, aged seven and ten, back to the boarding house for the start of the school year.*

*Although Mr Brewster was able to reassure us there was no need for concern as a mother, I just could not go home and leave my little girls there without finding out what was this all about. It was four days later after much anguish and confusion and a lot of counselling that I could be completely certain and so very relieved that nothing had happened to my elder daughter. It was to be a further two days with more counselling before I could know my younger daughter should not return to Prep.*

*This has been very traumatic for my whole family. It's my older daughter's very real fears about this fear are now hopefully still and finished."*

## **25 February 2001**

25.1 Archbishop Hollingworth wrote to Christine Munro and parents, including the parents of CD and AB. With such alterations as were necessary, the substance of the letters was the same.

*"I have received your letter of concern about the situation at Toowoomba Preparatory School, and I want to assure you that I have been in close consultation with the Head Master, Dr Coman, the Chairman of the school council and the Bishop for the Western Region, Bishop Charles.*

*I understand that you will now have received a second letter which should be of assurance to you as a parent, that the matter is in hand and that appropriate action has been taken with regard to the future.*

*I should explain too that the ramifications of the situation only emerged when I was interstate and it has not been possible to follow through the concerns felt by parents such as yourself at the time.*

*Please be assured that I am monitoring things closely and I believe that your concerns are being met. This is a matter which neither I nor the diocese, nor the school are taking lightly and our primary concern is to provide a secure and nurturing environment for all our students who are our first concern."*

25.2 Archbishop Hollingworth believed that the matter was being dealt with by the Headmaster, Dr Coman, the School Council and Bishop Smith. One of the criticisms of Dr Hollingsworth is that he did not move to make apologies and expressions of sympathy to the victims and their parents. That criticism is inappropriate, if only because Dr Hollingworth as the Archbishop was necessarily reliant upon those “at the coal face” i.e. the School Council, Dr Coman, Mr Brewster and the legal advisers for the Diocese. It is further contended, as appears hereunder that he was constrained by legal advice from doing this.

25.3 He was reasonably entitled to believe that the matter was being handled adequately and appropriately by the School Council and Mr Brewster. In short, whilst “the buck stops with the Archbishop” it was reasonable for him to rely upon the adequacy of the treatment with which the matter was being dealt with by the School Council. Dr Hollingworth was on leave in Victoria until the beginning of February. The Headmaster and the School Council were responsible for the day to day management of the School. That they intended to deal with the matter is reflected in the fact that when Dr Hollingworth attended Speech Day on 28 November, he was not apprised of the complaint made by CD, and the other surrounding circumstances, which Brewster was to report to the School Council on 30 November.

25.4 In deciding that Dr Hollingworth should not be criticised in respect of the handling of the TPS complaints, the Board was influenced by the submissions made by Dr Hollingworth's solicitors responding to documents provided to Dr Hollingworth and to other members of the Council. The following are extracts from those submissions which the Board accepts.

*"On behalf of Dr Hollingworth, we make the following comments.*

*... the Board refers to the letter of 15 January 1991 written to Dr Hollingworth by (the Mother of CD. The Board quotes two passages of that letter with reference to which it makes the comment that "it might be said [they] were not given a proper consideration or response".*

*Dr Hollingworth rejects entirely the suggestion that he did not give proper consideration to that letter. The fact is that he gave very serious consideration to each of the comments and points made in .....*

*Dr Hollingworth consulted with the school headmaster, Mr Brewster, with the Diocesan Schools Officer, Dr Coman, and with the chair of the school council, Archdeacon Booth. Because he was overseas at the critical period, Dr Hollingworth was unable to consult with the Diocesan Registrar, Mr Norman Reid, as he would otherwise have done. While it was apparent that Mr Brewster and Archdeacon Booth entertained doubts about whether or not abuse had in fact occurred as alleged, Dr Hollingworth believed that they were nevertheless actively considering the concerns of parents and taking professional advice in relation to action that should appropriately be taken by the school. Dr Coman hinted privately to Dr Hollingworth that he felt that the school's doubts about the fact of abuse might not be sound but, at the same time, could not recommend any significantly different approach on the part of the school in protecting students and in dealing with the concerns of parents.*

*In light of these consultations and the information that was then available to him, Dr Hollingworth formed an on balance view that the school was dealing with matters appropriately and would continue to do so.*



*Accordingly, we submit that there is no basis of fact on which the Board can conclude that Dr Hollingworth did not properly consider the issues raised in (the mother's) letter. The fact that there is no contemporaneous record of that consideration having been given (other than the response of February 1991 referred to at paragraph 59 of the Chronology) does not warrant criticism.*

*Moreover, we submit that the Dr Hollingworth's letter of February 1991 ... did provide a proper response to (the Mother's) expression of concern about the attitude of Mr Brewster and Mr Loveday. That letter accurately stated that Dr Hollingworth had been in close consultation with those responsible for the school's handling of the matter and that he believed that (the mother's) concerns were being met. While no doubt this response could have been more specific, it is evidently implicit in what was written that Dr Hollingworth did not believe that the attitude of Mr Brewster or any other relevant person in authority was preventing matters being handled in an appropriate manner. Further, having regard to the legal and management advice that was consistently provided to Dr Hollingworth in relation to the handling of such matters, the fact that his response was not more specific was, we submit, both understandable and reasonable.*

*It is accepted that Dr Hollingworth's response did not deal with (the mother's) expression of concern that Mr Guy had not been immediately stood down once the first allegation had been made against him. Dr Hollingworth accepts that, with hindsight, it may be thought by some that it would have been preferable for him to have specifically addressed this issue. However, it should be noted that, had he done so, it is unlikely that he would have been able to provide (the mother) with a response that she would have found satisfactory. This is for two reasons. First, he would have had to advise (the mother) that decisions on standing down a school employee were matters for the school's headmaster and council, and not for him as Archbishop. Second, having regard to the professional advice he received in relation to such matters, even if he had otherwise thought it appropriate to do so, he would not have felt able to criticise the decision not to stand Mr Guy down for fear that to do so would adversely affect the legal and insurance position of the Church. In all the circumstances, therefore, we submit that the fact that Dr Hollingworth's letter did not refer to this issue is similarly both understandable and reasonable.*

*The Board refers to letters written to various persons, including Dr Hollingworth, by (the parents of AB). The Board prefaces its comments on these letters with the words "in*

*similar vein". While there does not follow any specific criticism of Dr Hollingworth's response to (AB's parents) in case such is implied we submit that the above comments are generally applicable in this regard.*

*We accept the Board's view that, as a matter of law, "It would have been possible to frame an apology in terms that made it clear there was no admission of liability or fault on the part of the Diocese, but a registration of the dismay and outrage the Diocese had at what, unknowingly to the Diocese had occurred". However, we submit that it would be inappropriate for the Board to now criticise Dr Hollingworth for the fact that an apology so framed was not offered when the legal and management advice provided to him was to the contrary. Dr Hollingworth is not a qualified lawyer and it would be unreasonable for the Board to now suggest that he should have contradicted or acted against professional advice provided by those qualified to give such in disciplines in which he was not himself trained.*

*Dr Hollingworth has publicly stated that, with the wisdom of hindsight, he would now accept that various matters could have been handled differently. The question of tendering an apology is one such matter. But, as we have previously submitted, it would be inappropriate for the Board to apply the wisdom of hindsight in criticising individuals. Such hindsight may be appropriate in making recommendations for future action, but not for attributing criticism where the Board is bound to have regard only to circumstances as they then prevailed. ...."*

### **13 March 1991**

26.1 A further meeting of the School Council was held at which Brewster referred to a P and F meeting held on 28 February,

*"Quite a few supportive statements were made and although there were some among the number present who may have preferred to do further battle, sanity prevailed, and the general feeling at the meeting was to allow me to put things back together again for the sake of the school and all who operated therein, particularly the children.*

***A motion to form a committee to advise the council on how best to build in protection for children in any further crisis was lost. I shall however be consulting various professionals and others whom I feel could be of use in order to establish my own recommendations which I shall be***

*presenting to council, as I feel a clear (inaudible) is needed to cope with these circumstances. The meeting ended in relative harmony, the general consensus being that it was productive and forward looking.” (Emphasis supplied)*

26.2 Under the heading “Sunday 3 March” Mr Brewster stated:

*“The Archbishop told me that he had a visit from Mr Doumany, Dr Persley and Mrs Thomas the previous Friday, after the P and F meeting. The discussion was in accord with the feelings expressed above. There was expressed regret that the motion referred to was lost. I told the Archbishop of my intention to consult certain people and formulate a policy which he felt was a sound idea. We also spoke of the vexed question of repayment of the Connolly fees.”*

26.3 At the meeting on 13 March 1991 Council resolved that:

*“No admission of liability to meet such accounts (those of Mrs Connolly) should be made and that the advice of the diocesan Solicitors as to an appropriate response be sought.”*

26.4 The impression arguably gained from this meeting is that the Council is effectively saying “let’s not look any further to the past and the events of November/December 1990 but look to the future. Even so, it is difficult to accept there was a real desire to look to the future when the motion to form “a committee to advise the council on how best to build in protection for children in any further crisis” was rejected. This rejection implied, both a carelessness about what had happened in the past, and what might happen in the future.

26.5 This meeting of 13 March 1991 seemed to be treated as the finality of issues raised by the complaints of AB, and CD, the charging of

Guy, and his subsequent suicide (save for the issue of whether CD's parents should be reimbursed the costs of counselling).

26.6 That is confirmed by the absence of any reference to those complaints of abuse, or of any concern or involvement by that School Council or Headmaster, or by any succeeding Council or Headmaster until 1998. AB and CD and their parents confirm that there was no attempt on the part of the Headmaster, the School Council, or any other person in authority to manifest an interest and concern about how these two young girls were fairing. There was never any expression of concern by School persons in authority at what had happened. This required those girls to pass through adolescence to adulthood, with the perception that their complaints were not believed, and had it not been for them taking action many years later, that would have remained the position. The irony for the Diocese and its insurers is that had solicitude and concern been shown, apologies proffered and counselling costs met, the reputation of the Diocese would not have been blighted and a million plus dollars might have been saved.

### **The request for CD's counselling fees to be paid and the refusal**

27.1 Nothing better illustrated the unreality and unfairness of the School Authorities than their response to the request for reimbursement of counselling fees incurred by CD's parents. As stated above the Council seemed to treat the complaints as finalised, save for the

continuing request of CD's mother to be reimbursed the costs of counselling.

- 27.2 CD's mother had written to Dr Hollingworth on 15 January 1991 and said inter alia:

*"Mr Brewster had conferred with Archdeacon Booth and Professor Bailey, both members of the school council, and out of this emerged the one plus of the whole sorry saga. The recommendation that we see a counsellor"*

- 27.3 Whilst Mr Brewster maintained that because he did not have the authority of the school council to commit it to pay for these counselling fees, he does not doubt that he may have conveyed to CD's mother his support for that proposal. It is easy to see that CD's mother believed the fees would be met by the school. Who, it might be asked, would have thought otherwise.

### **7 February 1991**

- 27.4 CD's mother wrote to Brewster:

*"Thank you for your letter of 20 February (sic) 1991. I was under the impression that there was agreement between you and Mrs J Connolly for the school to pay the counselling fees. I certainly hope it is passed by the council. . . . I enclose the latest accounts from Mrs J Connolly and hope that CD's last appointment is today. . ."*

### **15 February 1991**

- 27.5 CD's mother again sought payment of the counselling. She stated:

*"I am forwarding the enclosed accounts for services rendered by Mrs J Connolly. This covers counselling and*

*related activities for (CD) and myself. It would be appreciated if this account was paid as soon as possible."*

28.1 Mr Brewster wrote to CD's Mother:

*"As your letter is by nature a claim against the school I have been advised that I have no option but to refer it to the school council for consideration and response. I have my own view on how your request should be met and I will state this clearly before council when it next meets on 13 March 1991.*

*I talked about this with the Archbishop when we met last week and he will no doubt have some input into the discussions which will take place. My only concern is that a decision may not be as immediately forthcoming as you would wish."*

A number of School Councillors have contended that the Diocesan Council was really the controlling force in these matters. The Board does not accept this. No doubt Council sought and relied upon legal advice effectively provided by the Diocese, but as appears from the above, the active discussion in respect of that issue was at School Council level. No doubt CD's parents were not concerned with demarcation issues, but with the simple request that some entity in the Diocese should meet the counselling fees incurred by reason of their daughter, whilst in the care and custody of the School, having been grossly sexually abused.

28.2 On 20 February 1991 Mr Brewster referred to this in a letter to Mr N.C. Reid.

*"During my conversation with Mrs Connolly she stated her view that as both CD and AB had been traumatised as a result of their contact with Mr Guy whilst in the care of the school, the school should feel morally obliged to pay their*

*counselling expenses. I replied that whilst I was personally sympathetic to that proposition and would support such a move, it was not either my responsibility or my right to make such a decision in isolation and that it would have to be left to the school authorities to determine. . .”*

The letter concluded:

*“Mrs Connolly declared her amazement that there should be any discussion necessary as to what the outcome would be.”*

28.3 Notwithstanding Mr Brewster’s attitude, by letters of 15 March 1991

he wrote to Dr Coman stating:

*“Dear Peter,  
As an indication of what CD’s Mother may come up with I enclose accounts sent to us by the D’s and the E’s being two families among the six out of twenty kids who were counselled. I personally cannot see how we can stretch to them.”*

28.4 The list of accounts showed for Mr and Mrs D, \$750.75 which was in respect of their daughter and Mr and Mrs E in respect of their daughter, \$115.50. For CD’s parents there was the figure of \$2082 and a further figure of \$140 which was all in respect of CD, and a further sum bringing the total to \$4,214.25. That amount did not include a further amount which Mrs Connolly claimed in respect of the services to Mr Brewster, Mr Fox and the SCAN unit.

### **3 April 1991**

29.1 Following the meeting of 13 March 1991 Dr Coman wrote to Mr

Lockhart stating:

*“I am writing to you to seek advice and assistance on several matters arising from the allegations made by two students of Toowoomba Preparatory School against the Senior Resident Master Mr Kevin Guy, now deceased.*

*The first matter relates to how the school should respond to correspondence from (CD's parents). . .who made allegations against Mr Guy, requesting that the school pay an account sent to her from Mrs Joy Connolly of J Connolly & Associates for professional services rendered to her and her daughter. . .We need to be advised on how the school should respond to others who have sought counselling for their daughters and may decide at a late stage to request the school to pay for these services. . .We also need to know whether the correspondence the school has received from (CD's parents) constitutes a "claim" against the school and could be construed as the first stage of a claim for damages. The diocesan Registrar has spoken on a confidential basis with Mr Hartwell of New Zealand Insurance, the diocesan insurers, alerting him to the situation which has arisen at Toowoomba Preparatory School and the possibility of a claim being made against the school.*

*The advice received from the insurers is that they do not wish to be involved at this stage and would only become involved if an action was brought against the school. The insurers indicated quite clearly that the school should not make any payments or admissions on the matter or the current public and professional liability insurance cover it has with them would be voided."*

- 29.2 This was a manifestation of the apparently rigid approach of the insurers. But no debate or consideration appears to have taken place, as to the making of an ex gratia payment for counselling, and at the same time eschewing liability on the part of the Diocese. The Diocese never sought to persuade the Insurer that an ex gratia payment (with a denial of liability) was what the situation cried out for. Likewise there was no such proposal by the Insurer.
- 29.3 On 19 April 1991 Mr Lockhart wrote a detailed reply to Dr Coman setting out the legal principles applicable to a claim against the school and concluding:



*“If proper care was taken in the selection of Mr Guy as a staff member and if there were no circumstances which raised or should have raised a suspicion that pupils might be the subject of sexual assault by Mr Guy at the time of his engagement or later, we do not consider that an action against the school authorities would succeed.*

*What we have said is based on an assumption that pupils in the school have in fact been sexually assaulted by Mr Guy. This has not been proved. We understand that prior to his death, Mr Guy denied that he was guilty of the conduct of which he was accused, and so far as we are aware apart from some accusations made long after the events which were alleged to have occurred, there is lack of evidence which would point to guilt on the part of Mr Guy.”*

29.4 With respect, Mr Lockhart was in error in assuming (as he appeared to do) that there was a lack of evidence pointing to guilt on the part of Guy. This takes no account of the evidence constituted by CD's complaint to the Head Master following her initial complaint to Mrs Adermann and Miss Quinn, and her subsequent complaint to the police. Likewise, the complaint of AB to the police was one of significantly protracted abuse. The confrontation of Mr Guy with the complaint of CD by Brewster and Loveday resulted in them being apparently convinced of the innocence of Mr Guy, and if so, this meant that the girls were either lying or imagining. Superimposed over all that was the offer of Guy to resign, and his subsequent suicide. The offered resignation was open to be taken as an admission of guilt, and the suicide as proof of consciousness of guilt. If at trial in 2001 the Diocese had not admitted that abuse had occurred, the offer to resign and the suicide would at the least have been relied on as confirmation of the complaint.

## 29.5 Mr Lockhart's letter continued:

*"Since in our view there can be no suggestion that Mr Guy acted in the course of his employment in assaulting pupils at the school, and since we are not aware of any failure on the part of the school to take reasonable care of pupils attending the school, we do not consider that there is any legal obligation on the school authorities to pay for counselling by Joy Connolly and Associates of girls who have sought the professional services of Mrs Connolly. We have not at this stage prepared a response to CD's mother's letter, for reasons which will become apparent in the succeeding paragraphs of the letter.*

*However we have noted that Mrs Connolly has suggested to the Head Master that the school has a moral obligation to pay her fees because the girls' counselled had been "traumatised" as a result of their conduct with Mr Guy whilst in the care of the school. If the school authorities consider that they are under some moral obligation to pay Mrs Connolly's fees, they may wish to make payment on an ex gratia basis as a gesture of sympathy and goodwill towards CD's mother and CD.*

*The difficulty in taking this course is that a much larger claim for damages might later be made and the payment now of counselling fees might well be used at a later date of an admission that the school authorities considered that they had failed to provide the care with which they should have provided for the pupils at the school.*

*There is a further reason for refusing to pay the fees of Joy Connolly & Associates. . . It appears from your correspondence that if a claim were made against the school the school would wish to seek indemnity under the professional indemnity insurance policy. We have not seen the conditions of the insurance policy but we think it highly likely that the payment of the counselling fees would be in breach of the terms of the policy and endanger the success of any claim against the insurer. This possibility has already been understood by you.*

*The school authority should not disclose to any claimant the existence of the insurances which they have effected. We have noted that the insurers do not wish to be involved at this stage. Since however, a request for payment of the counselling fees has been made we think that the insurer should be formally notified of the request and of all the circumstances relating to that request. The final decision as to whether CD's mother's claim should be met should be*

*taken by the insurer and a response to CD's mother's letter should be made at that point."*

29.6 Whilst it is notoriously easy to be wise after the event, this advice was mistaken. The Council and Dr Coman should have been advised that it should be sought to persuade the Insurer to agree to a statement being made to the following effect,

*"Certainly with respect to counselling fees they will be paid. In paying, it is made crystal clear that the school does not acknowledge any responsibility for, or liability in respect of, the conduct of Mr Guy. The potential for and the actuality of that deplorable conduct was not known to the school, its officers and its Head Master. But the conduct having occurred, albeit in circumstances which impose no liability on the school, the least the school can do is to provide assistance by way of counselling for the victims of the abuse and to apologise for the abuse perpetrated by Mr Guy."*

29.7 Mr Lockhart advised that an ex gratia payment could be made, but later says that this might constitute an admission. With respect, the whole point of making and describing the payment as ex gratia, is to prevent such payment being used as an admission. The payment could have been accompanied by a statement that the payment is made ex gratia, because the School and the Diocese in no way admit there is any liability at law for such payment.

29.8 It has been cogently put by Mrs Connolly, that unless there is an unconditional acceptance of the truth of a victim's complaint, the recovery from the trauma and hurt will be seriously impeded. The unfortunately fundamental fact, is that once a person has been abused, no matter how full the apology, how apparently adequate

the compensation, the fact abuse occurred is not eradicated but remains. It is vital for the Complainant to believe she is believed. It is Utopian to believe that counselling, and support, and whatever, will wipe out the reality of the long term effects. In some victims the issues and emotion surrounding the abuse are ineradicable. But the position is compounded, if there is anything short of an unreserved acceptance of the veracity of the victim's complaint, and the provision of relevant material and moral assistance.

Additionally these children were not only suffering because of the sex abuse, but from the further complication of the suicide of the perpetrator of that abuse, a suicide likely to have been triggered by the reporting of the crimes.

- 29.9 So far as CD was concerned, she was entitled to be distressed and concerned at the apparent attitude of the school. Here a thirteen year old girl having been subjected to protracted and serious sexual abuse, came forward to reveal this terrible truth. What also followed must have compounded her distress, namely the suicide of Guy. The maelstrom of confused thoughts and emotions which these events must have produced is easily imagined. But nowhere does it appear that it was made clear to her that the school and everyone else, accepted that she had been the victim of abuse, that she was not in any way to blame for the death of an adult. Instead, the attitude of the school was epitomised by the letter of Mr Lockhart, namely, do nothing, because this might attract liability on

the part of the school for the abusive acts of its House Master. This may have appeared proper legal advice, but the Council should have explored alternatives.

29.10 Accepting the potential for proceedings claiming breach of duty of care by the school, this should not have precluded the offering of ex gratia payments, and assistance to the victim. If subsequently the victim issued proceedings, but the above steps had been taken, a jury would at least have been inhibited, if not precluded from awarding exemplary damages. The stark fact was that the child whilst in the care of the school, was grossly abused. Morally, it was required of the School to make whatever permissible offer of apology and assistance that could be made. Pragmatically, as a matter of public relations, and indeed as a possible forestalling of the bringing of legal action, an emphatic statement by the school of its distress and concern at what had occurred, its deploring of the conduct, and its preparedness to apologise and to assist the child both materially and spiritually, was likely to have the best long term effects so far as the School's and the Insurer's interests were concerned.

29.11 The Board's view is that there were abundant reasons for the school authority to pay the counselling fees as a gesture of goodwill, sympathy and sorrow for the child's trauma, constituted by sexual abuse, followed by the suicide of the perpetrator. One would

hope that an insurer would readily agree, because such a payment and gesture of goodwill may at best result in no action being pursued, and in any event should be seen as conduct which, given an ultimate finding of liability, would be likely to reduce damages, and particularly exemplary damages. The Board considers that the School Council erred in accepting that it would not be for the good of the school for these counselling costs to be paid.

29.12 There did not appear at the time to be a reaction of disappointment or concern at the advice of the Solicitors, and the attitude of the insurer. The Council accepted apparently without demur the advice that there should be no payment of counselling fees. Expressions of concern now being made were not apparent at the time. With respect to Dr Coman, there does not appear to be any contemporaneous expression of concern by him, though he says that he did so privately and informally. Mr Brewster had made it clear that he was sympathetic to the suggestion that counselling fees be paid.

30.1 All this time CD's parents were awaiting a resolution of the matter. Unsurprisingly, almost indeed inevitably, this delay produced a further letter from CD's mother to Mr Moore.

*"It would seem that I must once again forward an account from Mrs Joy Connolly for the counselling CD required last year. Who knows just when the relevant church-school authorities will make a decision if they ever do. Perhaps they hope that if they (line is illegible, but it suggests that CD's mother says if they ignore it long enough it will go away). All*

*this does is to increase the bitterness and distrust already felt. I see no reason why we, the other families involved, or Mrs Connolly, should have to carry the can for an episode that had its roots within the school system. This indecisiveness is only prolonging her for all concerned. Please pass these thoughts on this account on to the relevant authority.”*

This eloquently expressed attitude of CD's mother was ignored

- 30.2 The cogent statement that the episode “had its roots within the school system”, should have driven the members of the School Council to seek a solution. Dr Coman wrote to Mr Lockhart and dealing with one aspect of the Connolly fees then said:

*“On another but related matter have you addressed the problem being created by CD's mother forwarding the accounts that she received from Mrs Connolly onto the school with a request for payment. A copy of a letter received by the school on 11 May 1991 is attached. As the school is anxious to resolve this matter as soon as possible would you please provide us with the advices we need and act for us at your earliest convenience”.*

With respect, the opportunity was there for Dr Coman to have added

*‘my own personal view is that every effort must be made to make these payments but consistently with preserving the insurance position.’*

- 30.3 The matter dragged on and on 26 July 1991 CD's mother wrote to Dr Coman enclosing an account and stating:

“We were given to understand that the Anglican Church Diocese were to make a decision on the undertaking given by the Headmaster Mr R.G. Brewster that counselling fees would be met by the church school. I will remind you that this was a commitment given to Mrs Connolly by the Headmaster in person.

If the Church and its minions cannot honour commitments made by their representatives, then they cannot expect any form of respect or integrity from the public in general. In other words we can regard the orations of the church hierarchy be it from the pulpit through the media, or in general discussion as just a lot of meaningless hogwash.

Obviously Church matters move oh so slowly when it suits them, no matter what the distress they cause the innocent.

I remind you that in order for our daughter to receive an education we had placed her care and protection in the charge of the Toowoomba Preparatory School. Hers and our trust was most definitely abused, the school failing to give the protection we and all other parents expected.

I was given information by several concerned persons, who for obvious reasons shall remain nameless that only rarely do either Mr Brewster or Mr Loveday put in an appearance out of school hours. Supervision was left almost entirely in the hands of Mr Guy, thus giving him the freedom to do as he willed, being as he was in overall charge of all the boarders. I realised this was a difficult time coinciding as it did with post operative problems and long service leave for Mr Brewster. However, this in no way mitigates the school's responsibility.

I look to you as a member of the diocesan council to put forward the argument that it is time the Church acted honestly accept the fact that they are in part responsible for what happened for what happened to our daughter, and honour the commitment made by Mr Brewster.

It is time, more than time, for this to be resolved.”

- 30.4 This was prophetic and persuasive writing, but it was only concerned to obtain reimbursement of expenses actually incurred for counselling. Those words were an embryo of the charge which the Judge gave to the jury at Toowoomba more than a decade later.



30.5 On 29 July 1991 Dr Coman wrote to NZI insurers stating:

*"I am writing to advise you that a claim has been received by Toowoomba Preparatory School from (CD's mother) who wishes the school to pay for services she and her daughter received during December 1990 and January and February 1991 from Joy Connolly & Associates. CD's mother believes the school should pay for these services which amount to \$2,358.75 as they were sought on the advice of the school Head Master following her daughter's allegations that whilst she was a boarder at the school she was the subject of incident assault by the school's Senior Resident Master.*

*I have been advised that the Registrar of the diocese Mr Norman Reid briefed you in February this year about the situation that had occurred at Toowoomba Preparatory School in November last year when two female students alleged they had been sexually assaulted by Mr Kevin Guy, Senior Resident Master. These allegations led to the situation where charges were laid against Guy by the Toowoomba police on 30 November 1990. The charges were for unlawfully and indecently dealing with a minor. " ...*

30.6 Dr Coman then referred to the arrangements for counselling and said that it,

*"was advice only not a requirement by the school. CD's mother disagrees with this interpretation. She believes the Head Master agreed that the school would pay for her counselling costs."*

There was then a description of Mr Guy's suicide and the letter continued:

*"Emotions of certain members and groups within the school community were very high over the December/February period, and an attempt was made to destabilise the school administration because of its refusal to publicly admit that any offense or offenses had indeed occurred at the school. Mrs Connolly stated in an open letter to the school which was read to a meeting of the Parents and Friends Association that she personally believed that the two girls had been assaulted and criticised the school's administration for not believing that the school's allegations were true **this was in conflict with our legal advice which was that no***

***conclusion of innocence or guilt on the part of the deceased could or should be drawn on the evidence available. Mrs Connolly's actions considered by many to lack professional detachment, be prejudicial to the deceased and be making an unwarranted attack on the school administration in particular.*** (Emphasis supplied)

31.1 This was a surprising letter. That legal advice was erroneous, because for reasons previously stated, there was abundant evidence of abuse of the two girls, namely the initial complaint of CD on 13 November and her later detailed statement to the police and the statement to the police made by AB in December. Whilst Guy had denied CD's complaint, there was no reason to assume she was making it up. Then, following Guy becoming aware that he was to be charged in respect of another girl, he suicided. It is surprising to find in July 1991 an apparent acceptance of the opinions that there was a lack of evidence. It was apparent from the mother's letter that she believed her daughter had been abused. That belief, as the belief of Dr Knox of SCAN, was founded on the acceptance of the girl's complaint. Implicit in the statement that no conclusion of innocence or guilt on the part of the deceased could or should be drawn on the evidence available, was a rejection or doubt of the veracity of the girls' complaints. There was no justification after December 1990 for doubting the fact of the abuse.

31.2 The letter then referred to the payment of other fees and referred to CD's mother:

*"The mother of one of the girls who alleged sexual abuse by Mr Guy has forwarded the account she had received from*

*Mrs Connolly to the school with a request that the school should pay. Acting on your advice to Mr Reid, and on the advice of our own legal advisers, we have advised the school that this bill of CD's mother should not be paid by the school as liability may be admitted or inferred if this is done.*

*As of now CD's mother's letters have only been acknowledged, not answered. We ask that you either draft the letter for us to forward to CD's mother to clarify the position, or write to her directly on our behalf. In this way you will be able to secure your interests as our insurer, and be in a position to represent our interests in this matter as your insured if the matter is further litigated."*

31.3 This was a regrettable attitude, because if an ex gratia payment coupled with a specific denial or no admission of liability had been made, the legal position would not have been altered. It must be noted that there was no statement made by the School Council that they wished to pay the costs of counselling, because legal considerations precluded or inhibited them from doing so.

32.1 On 1<sup>st</sup> of August 1991 Mr Lockhart wrote to Dr Coman,

“We noted from CD's Mother's letter of 26 July 1991 which was forwarded to us today that she claims that a commitment was given to Mrs Connolly by Mr Brewster that the counselling fees would be met.

We wrote to you on 19<sup>th</sup> April 1991 pointing out that the final decision as to whether (the) claim should be met, should be taken by the school's insurer and a response to her letter should be made at that point.

We note that you have referred CD's Mother's letter of 26 July 1991 to your insurer and we think that the insurer should arrange for an indication to be given to CD's Mother of its attitude to the payment of the counselling fees. We have already advised you that we do not think that you should take

any action in the matter without the approval and direction of the insurer.”

### ***30 August 1991***

*32.2 Dr Coman wrote to CD's Mother referring to past matters and saying,*

“I've asked Mr Lockhart to advise you of our position on this matter. Because the matter has been handed over to him for advice and action, I regret that neither Mr Brewster, the Toowoomba Preparatory School or myself will be able to deal with you directly in response to your request for the school of the diocese to pay Mrs Connolly's account for you. I hope this explains our position.”

### ***3 September 1991***

*32.3 Dr Coman wrote to Mr Lockhart,*

”On your advice I contacted Mr P Hartwell of New Zealand Insurance and informed him of the situation at Toowoomba Preparatory School and CD's Mother's claim. He agreed with your view that no payment should be made by the school or the diocese to her.

Mr Hartwell further informed us that Mr Ron Ashton of Morris Fletcher and Cross Solicitors of Brisbane representing the interests of New Zealand Insurance would contact you to discuss the situation prior to you responding to CD's Mother on our behalf.

I am writing to ask you if this had not already been done, would you please initiate the necessary contact with Mr Ashton and then write to CD's Mother outlining our response to her numerous requests made over the last six months for us to pay the amounts billed to her by Mrs Connolly. Our wish is to clearly state our position and avoid further uncertainties and expectations on her part.”

***2 September 1991***

*33.1 Mr R.S. Ashton of Morris Fletcher and Cross (later Minter Ellison) wrote to Flower & Hart saying,*

“We refer to the writers recent telephone conversation with Mr Lockhart wherein we advised that we act for new Zealand Insurance.

As the writer mentioned in our discussions, it is our view that the payments being sought from the school on behalf of CD’s Mother and her daughter (and/or any other parents or children) ought not to be made because of the implications it might have in relation to liability. Insofar as consideration had been given to payments sought directly by the counsellor from the principal on the basis of services rendered to the principal himself, that is a commercial matter which can appropriately be left to be resolved by the school on your advice.

We stress that in discussing these matter with you and in referring to them as above, we do not express any opinion at this stage upon the issue whether, if there were to be any claim in the future it would come within the policy or not. That is a matter not necessary for determination at this time.”

***17 September 1991***

*33.2 Mr Lockhart wrote to Dr Coman enclosing copy of a letter to CD’s Mother indicating that “payment of the fees incurred is a matter for her and not for the Synod”.*

### ***17 September 1991***

#### *33.3 The letter to CD's Mother read,*

“We are acting for the Corporation of the Synod of the Diocese of Brisbane. Your letter of 26 July 1991 addressed to the Diocesan Educational Consultants has been referred to us.

We note that you have incurred an account for counselling fees with Joy Connolly & Associates of Toowoomba and that you have requested that the account for counselling fees should be met by our client in connection with its administration of the Toowoomba Preparatory School.

The fees payable to Joy Connolly & Associates appear to be related to services rendered by them at your request. Our client is not responsible for the fees incurred and we are instructed to inform you that payment of the outstanding fees is a matter for you and our client does not propose to make payment of such fees.”

33.4 This was the end of the communications between CD's parents and the School Council. CD's parents paid the counselling fees. There for a number of years the matter rested, until first AB and then CD issued proceedings. AB obtained her verdict in December 2001, and in 2002 CD settled her claim upon the payment of a large sum of which the Diocese contributed nearly twenty percent.

### **Response by Members of the School Council**

34.1 In making the criticisms of the Head Master and the School Councillors referred to in this Report, the Board did so after giving due consideration to the helpful responses which the Head Master and some Councillors

made to the documents the Board forwarded to them. Principally those documents were a Chronology of documented events and a document entitled Points of Potential Criticisms.

34.2 It is not intended to deal with each point of the responses. This should not be taken as any indication that they were considered unimportant, or more importantly not given due consideration.

34.3 Mr Fox and Mr Elliott raised the reference in the Points of Criticism about finding of the jury that there was negligence in choosing a single man to be the resident House Master in charge of a large number of young girls. They both queried whether this was an issue for the jury. It is not possible to precisely identify the Particulars of Negligence which the jury found established. But the issue of choosing a single man as a resident house Master was an issue to be considered by the jury. In her charge to the jury, Her Honour Justice Wilson told the jury that if they found:

*“The procedures adopted in the selection of staff such as Mr Guy were inadequate, then you will answer yes to question 1 (a). I should make it clear that there was no law which would have prevented the Defendant from refusing to employ a single man in the position of senior Resident Master.”*

34.4 Mr Fox disputed the significance in the Points of Criticism had of Mr Guy's offer to resign, and its rejection by the Council. Mr Fox also pointed out that it was reasonable for Mr Brewster to rely upon the advice of Dr Bailey, who was probably the most eminent person in the field in the region. Mr Fox also said that notwithstanding that he has read Brewster's report a number of times, he could not draw the conclusion that was

postulated by the Board, that Mr Brewster was seen as being more preoccupied with the interests of the school and (consistently with that) the interests of Mr Guy than with the abused students and the Council. Mr Fox points out that school staff and the Council are unequipped to investigate serious criminal allegations, and Mr Fox refers to the problem which would have confronted the school Council seeking to obtain information from the police. It does now appear that Mr Fox is correct in so describing that position as one of difficulty or impossibility in obtaining information from the police, even after the suicide of the person charged. The Board deals with this in greater detail in the report in respect of the complaints against Kevin Lynch.

34.5 Mr Fox disputes that Guy's suicide should be seen as corroborative evidence, or indeed as pointing to his guilt. He says that the suggestion that the suicide was corroborative evidence, seems to imply that *"innocent people do not commit suicide"*.

34.6 Mr Fox says in respect of the statement, (see para 19.6(e) )

*"Mr Lockhart agreed with (Mr Fox) that on the basis of available information it was probable that Mr Guy would have been found not guilty of the charges is incorrect."*

*"Mr Lockhart did not say this. I did not say this."*

34.7 Mr Elliott said of the School Council,

*"As you are aware the diocese is governed between Synods*

*"As you are aware the diocese is governed between synods by a Board of Directors called 'The Archbishop and Council' and it is in*



*that body that all power resides. It was this body that appointed the Head Master Mr Brewster and the Bursar and the Secretary to the school Council Mr Moore. Effectively if not technically the school Council was an advisory body only, to the Archbishop and Council. At no time was I aware of any delegation of powers by the Archbishop and Council. The Council was a toothless tiger. It was my experience that at all relevant times both Brewster and Moore made it clear (albeit subtly) that they were answerable only to the Archbishop and Council.”*

34.8 The Board does not accept that contention. It finds that the following submission received from the Solicitors for the diocese, Flower & Hart, correctly states the position.

- “1. The governing body for the management of the affairs for the Anglican diocese of Brisbane is the “Synod of the diocese of Brisbane – constitution Section 4. The Synod meets once each year.*
- 2. Under Section 2 of the constitution, the Synod has appointed a diocesan Council to act as a Council to the Archbishop and to assist and advise him in conducting the business of the Synod at such times as it is not sitting. The Synod has delegated powers to diocesan Council pursuant to Section 14 of the Constitution and as set out in Section 13 of the diocesan Council Canon.*
- 3. The diocesan Council is authorised to delegate any of its powers under Section 16 of the diocesan Council Canon.*
- 4. The diocesan Council has delegated the day to day management of diocesan schools to a School Council in cases where the schools are not separately incorporated. Toowoomba Preparatory School is not separately incorporated.*

*In the early 1990’s the school operated under a constitution which charged the school Council with the control, management and direction of the school subject to the provisions of all acts and Canons in force from time to time.*

*The school’s regulation Canon of 1990 reserved to the Synod the control and management of-*

- (a) the general educational policy of the schools*
- (b) religious education in any school*

(c) *the appointment and removal of the principal of any school.”*

- 34.9 The School Council was considerably more than a toothless tiger as is illustrated by the way in which it was concerned and dealt with the events surrounding Guy’s detection as an abuser, his being charged, and his suicide.
- 34.10 Further, as will be seen later in this Report, the Diocesan Council were only aware in a limited way of what was occurring in respect of the litigation flowing from the depredations of Guy. Indeed it was the decision of the School Council (its membership then different from what it was in 1990) that precluded settlement of the action because the Council resolved it would contribute nothing towards the settlement.
- 34.11 So far as the response of Mrs Krimmer is concerned, inter alia, she has stated that she *retained “a healthy cynicism to the whole matter. Lying or fantasising was not beyond the realms of possibility”*. She added that if she had heard and read that Dr Knox stated definitely the girls had been molested “then this may have confirmed the matter for me. ...”
- 34.12 Further Mrs Krimmer, says that she regarded the fact that this man’s suicide as being proof of guilt as errant nonsense. She points out that once the police investigation ceased after Guy’s death, with only the Complainants able to speak, the matter became a competent counselling and parenting problem.

34.13 She further stated that:

*“Trained teaching staff dealing with the complaining students daily as boarders and as colleagues of the accused staff member were sceptical of the whole picture through lack of evidence.”*

She said that the Council:

*“Simply did not have the authority to act contrary to the advice of the direction of the diocesan’s Solicitors Flower & Hart though the bulk of Council’s business was done without their authority.*

*A second opinion should have been sought and was not and possibly this is the reason the diocese played a supine attitude to its defence of the matter in the Court room.”*

34.14 Dr Coman stated that he considered that the Points of Potential

Criticism appeared to be:

*“Fair and based on clearly documented evidence.”*

He said that:

*“No mention of any inappropriate behaviour or allegations of misconduct by Mr Guy were revealed to me by anyone when I attended the school’s Speech Day on the morning of 28/11/90. My recollection is that it was Mr Moore the school’s Bursar who telephoned me in Brisbane on 11/12/90 (sic) to inform me of Mr Guy’s suicide and who first gave me a brief generalised summary of the surrounding events.”*

Dr Coman must there be referring to the 18<sup>th</sup> of December which was the date of Mr Guy’s death.

34.15 Dr Coman said that:

*“I asked twice about the school offering to pay the counselling costs of the two girls mentioned in the charges laid against Mr Guy. The record did not express the frustration I felt during this meeting as I had come to the conclusion that sexual abuse had occurred. I recall quite clearly stating my view at this meeting after having had a private meeting with Mrs Connolly and believed the school should pay. Mr Lockhart was quick to point out that he would not*

*recommend this action as there was a lack of credible supporting evidence regarding Mr Guy's alleged actions and it would be of no benefit to the school.*

*I believed the school Council was in denial at this time. My recollection is that the cautionary advice regarding "credible supporting evidence" given by the two lawyers present Mr Lockhart and Mr Fox, but particularly Mr Lockhart, who was very influential because of his position as the diocesan Solicitor, affected the way the members of the school Council resolved the situation confronting them. I concur with the Board's comments . . . that Dr Knox from SCAN had no doubt that the two girls were molested.*

*Mr Reid instructed me in January 1991 to pass on to him all relevant correspondence I received directly or from the school so that it could be forwarded on for advice to either the diocesan Solicitors or the diocesan insurers. I followed these instructions throughout 1991 to the point where the diocesan Solicitors notified (CD's mother) on 17/9/91 that the diocese would not pay CD's counselling fees. I also met with the parents of AB to listen to their concerns about lack of diocesan support for their daughter. I felt quite frustrated by the fact that it took nine months to bring some finality to CD's mother's request. I was most disappointed with the outcome and felt that this would not be the end of the matter."*

34.16 Dr Coman's final comments were:

*"I consider it a point of criticism that other legal advice was not sought early in 1991 to test or qualify that given by the diocesan Solicitors and the diocesan insurers so that assistance could be provided to the two girls without prejudicing the insurance policy held at that time by the diocese. However even this concession may not have been sufficient to assist the girls completely in their healing process. Mrs Connolly made the point in January 1991 that she was of the strong opinion that the healing process in the girls would not succeed that they realised that their accusations of assault were unconditionally believed by those to whom the complaints had been made.*

*The admission in 2001 by the diocese before Justice Wilson that the assaults did occur was inconsistent with the view that prevailed over the previous ten years and which clearly constrained the efforts of diocesan officers and Dr Hollingworth to properly support the two victims of sexual abuse and their families. I am personally relieved that the matters has now been resolved in favour of the two girls and their families."*

### **The Period leading up to and the hearing of AB's claim**

35.1 The Board now proceeds to identify and examine events which took place from May 1999. These are conveniently summarised in a letter which Mr Ron Ashton of Minter Ellison wrote to Mr Allan Staples of CGU Insurance setting out a summary of advice and detailed reasons for that advice. Naturally, there is repetition of a deal of what has gone before. Inter alia it is written:

*“On about 14 October 1986 Mr Kevin George Guy (Mr Guy) was appointed the Senior Resident Master of the TPS commencing 1 January 1987. At that time Mr Guy was aged 35. He was single and had for the previous seven years taught in Gibgate School Mittagong (Frensham Junior School).*

*. . . The Claimant (AB) was born on 28 July 1977 and commenced schooling at the TPS in Year 7 in January 1990 aged 12.*

*AB asserts that she was first sexually assaulted by Mr Guy in the course of the long weekend of the second term after the Year 7 students had been watching videos in the Year 7 common room which was being supervised by Mr Guy. On that occasion Mr Guy had fondled her breasts.*

*The abuse from then on is alleged to have escalated in both severity (from fondling to intercourse) and frequency (at least one or two occasions per week) in the months of June, July, August and September 1990 and then reducing in frequency to once and twice a month in October and November 1990.*

*On 9 November 1990 the Head Master of the TPS, Mr R. Brewster, was telephoned by the Mistress in charge of girl boarders, Mrs Jeanette Adermann and advised that AB was missing from her bed. Mr Guy could not be raised by telephone. Mr and Mrs Brewster joined in the search for AB. Mr Guy and AB then appeared at Mrs Adermann's door. Mr Guy said that while he was on his “locking-up” rounds he found AB in her pajamas and dressing gown in a distressed state sitting on the recreation room steps. He said that AB had refused to go back to her room and so Mr Guy decided to talk to her in the darkened recreation room so as to calm*

*her down. He did not want to leave her alone and fetch Mrs Adermann (he claimed) as he was concerned that AB may run away. AB agreed to return to the boarding house. Mr Guy realised that he was in a delicate position but he did not think he could do anything else.”*

*The report of AB’s psychologist, Joy Connolly, dated 30 March 1998 (discussed further below) refers to the 9 November 1990 incident discussed above. It recounts that a fellow student in AB’s dormitory first raised the alarm when AB failed to return to her bed. It is asserted in the report that AB was in the Year 7 common room with Mr Guy. They both heard the search going on whereupon Mr Guy dressed himself and went out to Mrs Adermann and claimed that he had found AB sitting on the steps in a distressed state.*

*It is recounted in Miss Connolly’s report that Mrs Adermann had taken AB out shopping the next day and questioned her on the events of the previous evening. AB, fearful of getting into trouble, claimed that nothing was wrong.*

*On 13 November 1990 another student at the TPS, CD confided in the House Mistress, Miss Penny Grant, and to Mr Brewster, that Mr Guy had, on four occasions, between April/May 1990 fondled her breasts and genitalia.*

*On 15 November 1990 a group of Year 7 students told Mr Brewster that Mr Guy had treated them harshly, that he favoured AB and that something “funny” was happening between them. CD (one of the group of girls who spoke to Mr Brewster) said that she had heard Mr Guy ask AB whether she was still a virgin in the lobby of a class room.*

*Mr Brewster suggested to CD that she must have misheard and that the girls should be more tolerant of Mr Guy and AB because Mr Guy was helping her out with her problems.*

*On 16 November 1990 Mr Brewster and the Deputy Head Master, Mr Larry Loveday, confronted Mr Guy with CD’s allegations (without divulging the identity of CD). Mr Guy denied any impropriety and had no recollection of any situation which could lead to such allegations.*

*On 19 November 1990 Mr Brewster met with AB to discuss what had occurred on the 9<sup>th</sup> of November 1990. AB said that she was well and agreed that it was not wise to wander in the dark. Mr Brewster asked if Mr Guy had helped her and if he did, or said anything which might have embarrassed or concerned her. AB said that Mr Guy was helpful and that he did nothing untoward.*

*On 30 November 1990 Senior Constable Bill Knowles and First Class Constable Julie Cockburn of the Juvenile Aid Bureau called into the school to see Mr Guy for an interview at the police station. Mr Brewster arranged for a lawyer to accompany Mr Guy to the police station. That evening, at a TPS council meeting, Mr Brewster reported that Mr Guy was to be charged with "unlawfully dealing with a minor" (CD). The TPS council resolved that Mr Guy be asked to withdraw his (apparent) offer of resignation and to consider himself being on paid extended leave until March 1991 when the matter was to be reviewed.*

*On 30 November 1990 Mr Guy was charged with "unlawfully dealing with a minor" and he entered "no plea" when he appeared before the Magistrate's Court on 3 December 1990. On 7 December 1990 the Toowoomba police contacted AB's parents to arrange an interview with the mother of AB.*

*Mr Guy subsequently committed suicide and his body was found at Ravensbourne on 18 December 1990.*

*On 25 December 1990 Sister Christine Munro of the TPS wrote to Archbishop Hollingworth and expressed concern of a "cover up" at the TPS about the abuse of girls. Sister Munro stated that both she and other staff members had had concerns about Mr Guy for some time but that she had only reported matters to Mr Brewster after "it all happened".*

35.2 The letter then went on to examine the relevant and applicable policy and a description of the treatment which AB received. There was a consideration of whether or not the insurer may be able to take advantage of the clause in the policy which provided that,

*"The insured shall-*

- (a) exercise reasonable care that only competent employees are employed . . .*
- (b) take all reasonable precautions to-*
  - (i) prevent bodily injury;*
  - (ii) comply and ensure that his employees, servants and agents comply with all statutory obligations, by-laws or*

*regulations imposed by any public authority in respect thereof or for the safety of person.”*

35.3 The letter then posed this question,

*“Accordingly, the question arises as to whether the Anglican diocese not only recognised the danger and failed to take measures to avert it, but also took a deliberate decision “to court the danger”. . . we mentioned in the recitation of the facts that Sister Christine Munro had written to Archbishop Hollingworth after Mr Guy’s death in order to voice her concerns about a “cover-up”. She also mentioned the suspicion that she and other staff had about Mr Guy. We have asked the Anglican diocese to provide us with preliminary statements from the TPS staff on the nature of their suspicions and what they did about them. Our feeling is that we will probably not be able to establish a breach of the reasonable precautions provisions of the policy but we should postpone final decision until we have reviewed these materials.”*

35.4 There is then a reference to the detailed report of Mrs Joy Connolly which described AB having treatment in 1991 but then a gap until July 1997. The letter concluded,

*“We have spoken to Mr Bernie Yorke of the Anglican diocese and Flower & Hart and they have both expressed the desire that AB’s claim be settled with as little publicity as possible. Apparently, the TPS has a new Head Master and has put the incident of Mr Guy behind it. The Anglican diocese is anxious not to raise the matter of Mr Guy in the public arena lest bad publicity affect the TPS.”*

### **18 August 2000**

35.5 Minter Ellison write to the insurer advising,

*“Flower & Hart are demanding a final decision be made with respect to indemnity in this matter. They gave notice pursuant to Section 41 of the Insurance Contracts Act 1984 requiring that a formal determination be made by 11<sup>th</sup> August 2000. We have contacted Flower & Hart and they are*



*content for a determination to be made prior to the mediation.*

*We provided you with a comprehensive advice with respect to indemnity, liability and quantum by way of letter dated 19 May 1999. We are now in a position to provide you with an update of that advice for the purposes of settling the issue of indemnity and in preparation for the mediation on 24 August 2000. ...*

*“It does seem to us that AB’s claims really relate to an alleged failure on the part of the school to protect her physically during the course of her residency at the boarding school and not it would seem in the context of Mr Guy providing any “spiritual guidance” in a formal sense. . . . The information which we obtained from Mr Brewster and the former Deputy Head Master Mr Loveday suggests that Mr Guy was employed at the school on the basis of part of a “glowing” personal reference from Gribgate School Mittagong, that Mr Guy carried out his work in an exemplary fashion and that neither Mr Brewster nor Mr Loveday had any cause for concern about Mr Guy until the complaints of AB (and CD) surfaced in 1990.”*

35.6 The letter then goes into considerable detail in relation to the issues of liability and concludes by making estimates and quantum summary.

## **6 February 2001**

36.1 Minter Ellison wrote to CGU Insurance. This is further advice in relation to the claim and a further estimate of the range of damages. Suffice to say that there was a big discrepancy between what Minter Ellison considered was the high range of the likely award, and what the Plaintiff’s Solicitors were indicating was the amount required.

**16 May 2001**

36.2 Minters advised CGU of the decision in *Lepore v. State of New South Wales* which relevantly held,

*“A School Authority’s duty to take reasonable care to ensure the safety of a pupil extends to protecting the pupil from physical and/or sexual abuse, at least where due care would have avoided it. There is no doubt the State owed the appellant a non delegable duty of care. There are no compelling policy reasons why the scope of this duty should not extend to protection from intentional as well as negligently inflicted wrongs on school premises by an employee having direct oversight over the pupil.”*

This decision made the Plaintiff’s case stronger than it clearly already was. Not surprisingly the advice was that the Plaintiff would probably adopt a more robust attitude in settlement negotiations.

37.1 A chronology was prepared which refers to events between 8 November 2001 to 4 December 2001. Inter alia, it contains.

**8 November 2002**

(a) Ron Ashton speaks on the telephone hook up. He says

*“Counsel’s advice accords with their analysis of the matter ... \$50,000.00 was the best offer made by the insurer at mediation. The other side indicated that \$250,000.00 was wanted. A formal offer of \$80,000.00 plus costs was put by the insurer. The Plaintiff changed Solicitors. Ashton had indicated to the Solicitors that the Defendant might go to \$100,000.00. Their Solicitor said they would recommend to AB that she accept settlement of \$200,000.00. He would be surprised if exemplary damages are awarded. He said that \$150,000.00 was the high side of their assessment.”*

**(b) 12 November 2001**

*“A call from Ron Ashton. . . . Staples at CGU has instructed Ashton to go to \$150,000.00. Do we want to make a contribution? He asked whether we should make the offer public. I told him we will not be contributing on current instructions. Ron Ashton wanted to know if we have any objection to their making an offer of \$150,000.00 plus costs. I said we do not. I asked him to keep us informed of the substance of the negotiations.”*

(It seems likely that had \$50,000.00 been contributed by the Diocese at that stage the case would have settled for \$200,000.00. Later on it is noted that Counsel for the Plaintiff said to Counsel for the diocese “not to bother him for less than \$250,000.00.”)

**(c) 12 November 2001**

A call to Mr Yorke. Informs him that the matter will be going to trial as it stands. **He says the School Council has had a meeting and will not pay a cent.** It was over ten years ago and the perpetrator is deceased. Brady Pohle is in Toowoomba this morning preparing for trial. (Emphasis supplied)

**(d) 13 November 2001**

The Chronology simply records “Letter to Minter Ellison re conduct”. That letter (Document 7A) read inter alia,

*“The diocese is now concerned about its position in the running of this case. We set out below some basic points about the matter so that we are clear about the present position of the insurer and the assured. We have not been involved with any of the preparations for this trial and you*

*must forgive us if there are areas you may have informed the assured about but of which we are unaware.”*

### **Base Propositions**

The claim for damages includes a claim for exemplary damages.

- Exemplary damages are not indemnified under the policy, according to the insurer.
- Exemplary damages will be determined as part of the action in respect of which the insurer has exercised rights of subrogation and is conducting the defence.
- The insurer has no commercial interest in the amount of exemplary damages awarded. The assured has an immediate interest.
- The assured is not represented by its own Counsel at the trial and you have agreed with our suggestion that this would be undesirable.
- The insurer must nevertheless conduct the defence with utmost good faith to the interests of the assured, Insurance Contract Act 1984 (Cth) S.13.
- Mr Ashton and Ms Dalton have expressed concern that exemplary damages will be awarded in this case. This is based on information provided by Plaintiff's Counsel tending to show,

*(a) that Mr Brewster was informed of unacceptable behaviour by Mr Guy and did nothing about it;*

(b) that Mr Guy's reprehensible behaviour was so obvious as to be notorious within the school;

(c) that Mr Brewster was complicit in the activities of Mr Guy;

(d) the supervision of the students was so lax as to amount to a contumelious disregard for the welfare of the students;

(e) the conduct of the school after the suicide of Mr Guy;

- (f) Ms Dalton's advice on liability and quantum dated 30 October 2001 did not explore the matter of liability for exemplary damages other than in the context of vicarious liability. She did not outline the evidence relative to the claim for exemplary damages.

The letter then refers to having spoken to Mr Brewster and refuting the points upon which concern had been expressed in relation to exemplary damages. The letter continues,

*"We asked Ms Dalton to provide us with an outline of the submissions she intended to make in relation to exemplary damages so that the insured could be satisfied that separate legal representation, apart from being undesirable, is unnecessary. She pointed out that in a jury trial she could not make submissions of law but only of fact and the facts would not be known until the evidence is settled at trial."*

The letter then referred to some other evidence and concluded,

"Because we are now uncertain that the insurer is acting in the best interests of the assured in defending the claim so far as it relates to exemplary damages we propose the following:

- *That the insurer confirms that it will represent the interests of the assured as required by the duty of utmost good faith.*
- *That you provide us urgently with a copy of the brief to Counsel except only to parts of the brief containing advice to the insurer re its obligations under the policies.*
- *That you confirm that you will submit evidence from witnesses whom we may suggest are necessary in relation to the question of exemplary damages.*
- *That the insurer confirm that liability under the policy is admitted subject to the rights of the insurer under the policy in the light of any new evidence.*
- *That the insurer nominate which policy is responding to this claim.*

- *That you confirm that your instructions and instructions of Counsel are to present a case in response to the claim for exemplary damages in the same manner you would do if you were acting as Solicitor for the assured."*

(e) Unsurprisingly that letter produced a reply the same morning. In relation to the proposals the letter from Minter Ellison of 13 November 2001 stated:

- *The insurer has acted throughout in accordance with its obligations of good faith and will continue to do so. The very high degree of consultation with the assured from the very start of the action through the mediation and right up to the present time is well known to you.*
- *Counsel's brief and our copy of it are both in Toowoomba. It is not a practical proposition to supply a copy to you any earlier than tomorrow.*
- *As mentioned above, subject to admissibility and the exigencies of the case (as to which we will always consult with you), we will be happy to submit evidence from other witnesses you may suggest in relation to exemplary damages.*
- *The insurer confirms its liability under the policy on the basis of already accepted that of course is subject to the reservation of its rights in the event that evidence not previously disclosed were to emerge.*
- *The policy which responds is the public liability policy for the years in which the events occurred.*
- *We are of course instructed and have instructed Counsel to act consistently with the assured on the whole issues including as to exemplary damages. Our consistently reporting to you and consultation (including as to the information we gleaned yesterday) are utterly (inaudible) with that.*
- *We remind you that notwithstanding that there are live issues on liability the insurer has been wanting to offer to settle this matter at a top of the range figure advised by Counsel plus costs.*

- *We have expressed to you some anxiety about the risk of exemplary damages (not at first thought high but probably now higher in the light of what we were told yesterday). We invited your client to consider some supplementing of the insured's contribution to avoid this risk but your response was that the church was willing to face the consequences, that its view was that these events occurred a long time ago, that things have now changed and that any publicity would be received and viewed in that light. This is as it may be, but please do not attempt to shift responsibility for that judgment to the insurer or us.*

**(f) 13 November 2001**

A fax to Mr Yorke with outline of principles of exemplary damages.

**(g) 15 November 2001**

Memo Jean Dalton to Ron Ashton. . . She says on page 4 that unless the Plaintiff's witnesses collapsed, her recommendation would be to admit liability for ordinary damages and call no evidence but Dr Redon on quantum.

**(h) 15 November 2001**

Letter from Minter Ellison referring to a claim by Counsel for the Plaintiff for the nurse. Sister will say that she observed a number of girls frolicking naked in the shower earlier in the presence of Mr Brewster.

**(i) 15 November 2001**

Call from Ron Ashton. The Plaintiff won't settle for \$250,000.00. Indemnity is in doubt. He said he had no instructions but he might obtain authorisation from his client for another \$50,000.00 and perhaps \$50,000.00 from us would get up the figure to \$200,000.00.

**(j) 15 November 2001**

Bruce Howden on the phone . . . the events occurred eleven years ago and there have been two Heads since Brewster. Chris Tait of Wonderley and Hall says its not going to impact too much on the school. There has been complete support from the parents of school children. **The School Council says we don't put any money in. They will wear the publicity. They are operating on a shoe-string. They will**

**wear the publicity likely to attend the evidence of the nurse. They will consider an advantageous settlement if an opportunity should arise but otherwise will take a verdict at the end of the trial.**

- (k) 16 November 2001**  
Memo from Jean Dalton to Ron Ashton. On page 4 she says that she still recommends that the matter be settled if at all possible.
- (l) 21 November 2001**  
Memo from Brady Pohle to Ron Ashton. Brady says the Plaintiff's Counsel approached him in relation to reinstating negotiation. Brady informed him that we had made our offer and that in order for the negotiations to be progressed he would need to make some sort of counter offer or at least formally respond to our offer. Later in the day, Mr Myers approached our Counsel with a figure of \$350,00.00 plus costs. This amount was dismissed as completely unreasonable as it is \$100,000.00 more than the figure the Plaintiff's Counsel had mentioned earlier. Additionally, the Plaintiff's case is not going particularly well so it would ordinarily be expected that the counter offer by them would be less.
- (m) 22 November 2001**  
Call from Mr Yorke. The Governor General is very concerned. He wants it known that he was not told of anything about this until after the suicide. He wants me to speak to the Toowoomba Chronicle tonight.
- (n) 22 November 2001**  
Call to Mr Yorke. Told him we should not be arguing the evidence outside the Court. The Archbishop(Hollingworth) is adamant that he knew nothing about it. He went to the prep's speech day a couple of weeks earlier and is absolutely certain that he knew nothing about it at that time. Perhaps Jean Dalton can make a statement about it in Court.
- (o) 23 November 2001**  
Call from Ron Ashton. The letter of Archbishop of 25 February 1991 has been admitted to evidence. ...

With regard to exemplary damages, they are concerned that a case may be made against Brewster. The Archbishop will be mentioned today in the context of the AB letters. ...



**(p) 23 November 2001**

11.15 a.m. call from Ron Ashton. Evidence was adduced as to letters this morning. They rang for the Archbishop and he failed to return the calls. One juror has been gasping and sobbing during this evidence. The other side has withdrawn its offer of \$350,000.00. There will be more publicity adverse to the Archbishop.

**(q) 25 November 2001**

Meeting in Ms Dalton's Chambers with Ron Ashton, Ms Dalton, David Watt. We reviewed the evidence to date and contemplated the issues relating to exemplary damages and the evidence that might be adduced. Ron Ashton said that he could not see any opportunity to settle the matter until appeal. There was no offer on the table at present and no indication that the Plaintiff was likely to make a further offer.

**(r) 30 November 2001**

Memo from Jean Dalton to Minter Ellison. She says at page 2,

*"In advising both yourself and Robert Cunningham directly about the quantum of exemplary damages in the first week of the trial I referred you to the case of XL Petroleum in the High Court. My advice to both of you was that the initial jury award of \$400,000.00 (reduced on appeal to \$150,000.00) was firstly out-dated in economic terms and secondly an award for conduct which might be regarded as far less morally contumelious than the conduct in the present case. I advised you both then that an award of several hundred thousand dollars for exemplary damages was not out of the question . . . I cannot see that it is prudent in responsible risk management not to attempt to settle the matter. If this jury awards several hundred thousand dollars as exemplary damages my view is, based on the XL Petroleum court case, that the Court of Appeal will not overturn that award as excessive."*

**(s) 3 December 2001**

Call from Ron Ashton. He is proposing to go to the insurer looking for money. \$200,000.00 may be from the insurer with a similar amount from the diocese. They don't know how to predict the exemplary damages likely to be awarded.

**(t) 4 December 2001**

9.05 a.m. call to Mr Yorke. The school is very concerned about the evidence of Adderman about there not being any security in place now. I told him of my discussion with Mr Bain last night. He agrees we should not contribute the \$200,000.00 suggested by Ashton yesterday.

38. (a) 'History of Settlement Considerations'. The document sets out the chronology of negotiations and considerations with respect to settlement.

(b) The History concludes 3 December 2001

Senior Counsel advises the diocese on the basis of reports of the trial:

- *"there is a good chance that exemplary damages will be awarded;*
- *the quantum of exemplary damages could not be predicted but there is a reasonable chance that the exemplary damages would be less than \$200,000.00;*
- *as there is a reasonable chance that the quantum of exemplary damages would be less than \$200,000.00 there is a chance that exemplary damages will not be awarded at all and because there is no assurance that the Plaintiff would accept an offer of \$400,000.00 it would be sensible for the diocese not to offer the contribution at this stage of the trial."*

**15 November 2001**

39.1 This was the first day of the Trial, and progress is recorded in the extracts of correspondence which follows, (some of these extracts already appear above).

39.2 Minter Ellison wrote to Flower & Hart (Document 9) enclosing a copy of memorandum (Document 10) from Jean Dalton of Counsel.

In that memorandum she stated, inter alia:

(a) *"... First thing in the morning I made an application to,*

*exclude evidence of a highly prejudicial kind that the psychologist Joy Connolly, had attempted to speak to Archbishop Hollingworth about this matter but that he had been going on vacation and refused to see her. The matter was resolved with the trial Judge indicating that provisionally she ruled it inadmissible. . . .*

*... in conjunction with this I sought the ruling that the suicide note of the relevant Master Kevin Guy be ruled inadmissible. The trial judge ruled the note inadmissible but refused to take the issue of exemplary damages from the jury. ...*

*Early on the first day of the trial I made a formal admission that the abuse alleged by the Plaintiff took place in accordance with my instructions.*

*Also on the first day, the jury was empanelled. The jury are to be four rather elderly but none the less quite attentive citizens who appear to be taking an active and considered part in the trial.*

- (b) *The second day was completely occupied with the evidence of the Plaintiff AB. She presented her evidence in quite a composed manner and was rational and articulate throughout.”*
- (c) The memorandum then deals with events at the trial and concluded,

***“Future conduct.***

*My recommendation is we see how the factual witnesses called by the Plaintiff perform today and test their evidence under cross examination. After that process, I recommend that we decide whether or not to admit liability.*

*Unless the Plaintiff’s witnesses collapse spectacularly today my recommendation is that we admit liability and simply call Jill Redden on the question of quantum. If the admission of liability is made in respect of only of ordinary (not exemplary) damages the school could call evidence on the question of exemplary damages. At the moment I am not aware of any evidence available to the school on this point.*

- (d) Counsel then considered the issue of calling evidence of the school's reputation and stated,

*“Quite frankly, I think that any emphasis by the school on its reputation and ideals will be used by the plaintiff to suggest that much more could have been expected from such an institution. Whereas, clearly a suggestion in the contemporary correspondence (December 1990 – February 1991) that the school was far more interested in its reputation than the psychological well being of its students. I am sure that Mr Myers would make this point with any such witness. In fact Mr Myers in his opening referred to the fact that the school had a long history and a fine reputation. He did so to emphasise how great a fall in short had occurred in this case. My view is that calling evidence on this point will actually damage the school's case on exemplary damages. ...*

- (e) *Another suggestion made by the school's lawyers is that evidence be put forward that the school lost income because its boarders' number declined after the 1990 incidents. I am yet to see any such evidence. Of course the evidence would have to go further than to show that boarder numbers declined in 1991 and shortly following. There will have to be some evidence of causal connection between the events at the end of 1990 and the subsequent loss of income. I cannot see how the school could make that causal connection without advertng to the adverse publicity it received at the time. I cannot further see why the school would want to emphasise that particularly as it will not relate just to the plaintiff but will relate to the other girl, AB and the potential problems experienced by all the girls named in the suicide note. It is just this sort of evidence – evidence of wide spread allegations and complaints – which we have fought so hard to keep out of the courtroom so far.*

*I anticipate that at some stage before tomorrow we will have to make a choice about future conduct of the matter, and unless the plaintiffs' witnesses have collapsed, my recommendation would be to admit liability for ordinary damages and call no evidence but Dr Redden on quantum.*

### 16 November 2000 (sic)

39.3 This was an internal memo from Jean Dalton to Ron Ashton. This describes the evidence being given and concluded:

*“19. I still recommend for the reasons outlined in my memo yesterday concerning Mr Brewster as a witness and for the further reasons discussed with both you and Robert Cunningham today and referred to above, that this matter be settled if at all possible. I understand from our discussions that we will work towards having an offer available over the weekend.”*

### 21 November 2001

39.4 Memorandum from Brady Pohle to Ron Ashton. (Document 12)

This summarised the matters which occurred on Wednesday 20<sup>th</sup>

November 2001. The memo contained, inter alia:

- *“in the late evening of the previous day the Plaintiff’s Solicitors delivered a substantially Amended Statement of Claim. Our Counsel has been working on the draft Amended Defence that evening and had continued to work into the morning. Commencement of the trial was delayed while we finalised our Amended Defence.*
- *When the matter was stood down the Judge enquired whether there was any prospect of the matter resolving. Mr Myers indicated that there had been some discussions but that he was doubtful. **The Judge then urged the parties to attempt to resolve the matter commenting that it seemed that this trial could really get out of hand.**” (Emphasis supplied)*

### 30 November 2001

39.5 This was a letter (Document 13) from Jean Dalton of Counsel to Mr Ashton of Minter Ellison.

*“I write to confirm the concern which I expressed to you by phone yesterday.”*

The letter dealt with the evidence which had been given particularly by Mr Brewster in cross examination directed to the issue of exemplary damages. The letter concluded:

*“Wednesday afternoon Mr Myers, Counsel for the Plaintiff told me, ‘It is never too late to settle the matter’. I cannot see that it is prudent and responsible risk management not to attempt to settle the matter. If this jury awards several hundred thousand dollars as exemplary damages my view based on the XL Petroleum case, that the Court of Appeal will not overturn that award as excessive. There is an immediate impact in that the amount must be paid to the Plaintiff. It appears to me that there is a much larger impact because in other litigation pending in similar claims, there is a precedent established would make settlement of future claims very expensive.*

*I urge you to consult with Robert Cunningham again in an attempt to put in place some sensible rules to offer to the Plaintiff.”*

## **2 December 2001**

39.6 In submissions as to directions to the jury. Ms Dalton set out in detail the submissions she proposed to make on the directions to be given to the jury and referred to a considerable number of legal authorities.

## **4 December 2001**

40.1 Flower & Hart wrote to Mr Ashton at Minter Ellison. (Document 15) stating inter alia,

*“It seems to us that the Plaintiff may have over estimated the damages she is likely to be awarded in this case. Ms Dalton’s concern expressed in her facsimile of 30 November centre around a likelihood that the jury will take a dim view of the diocese’s actions particularly after the suicide and during the year following the year in which the action complained of occurred.*

*The diocese is always concerned about the prospects of further adverse publicity but it believes that the bulk of the bad publicity has already occurred. Adverse publicity is not therefore a factor in the consideration of the diocese about any proposal for settlement.*

*As indicated earlier the Plaintiff may have genuinely over estimated the likely quantum of its compensatory damages. The amount which is apparently being envisaged for exemplary damages seems to be so high that there is no point in the diocese considering a settlement in that range if there is any prospect that the final award of damages will be less than sought.*

*We would be grateful if you could emphasise in the Submissions the point about the separation of the heartless conduct of the diocese from the tort complained of.”*

40.2 That letter had been settled by Senior Counsel. This was a reference to the fact that the allegations of negligence relate to the period before November 1990, whereas there was allegation of negligence in the period after 1990, when the “heartless conduct” occurred. But that was not going to prevent the jury from looking at the conduct of the Diocese after 1990. That this was so is clearly set out in Wilson J’s charge to the jury on exemplary damages.

40.3 The Board does not criticise the lawyers handling of the trial. Of course in hindsight, it can be seen that different approaches, than those taken would probably have produced a better result. Most notably, the admission that AB had been abused by Guy should have better made at least at the inception of the proceedings rather than the first day of the trial. The description by the Insurers of the abuse of AB at para 40 was no doubt the product of an assessor’s report, upon his/her investigation of AB’s claim. Much of that

material would have been available if an investigation had been made in the last weeks of December 1990. This again demonstrates the fallacy of the advice that there was a lack of evidence of abuse.

- 40.4 Ms Dalton's warnings (admittedly fairly late in the day) that if the jury awarded several hundred thousand dollars in exemplary damages, this would not be overturned by the Court of Appeal, and her urging for a sensible offer to be made, should have produced a greater acknowledgement and reaction than appeared to have been the case.

### **The Aftermath of the Judgment**

- 41.1 The record judgment was a financial catastrophe for the diocese, and it is useful to analyse the events which led up to that verdict. The litigation was primarily controlled by the Solicitors for the insurer in liaison with Flower & Hart, the Solicitors for the diocese, who in turn consulted with Mr Bernard Yorke the General Manager of the diocese.

- 41.2 Flower & Hart submit as follows:

*"Each school council was responsible for the management of the school. However, each school necessarily operated under the name of the diocese (because the school was not separately incorporated) but generally was concerned only with issues important to the school.*

*A circumstance such as the sexual abuse involving the Toowoomba Preparatory School involved an action against the diocese in respect of an entity controlled from day to day by its school council.*



*The local school council is not necessarily aware of the broader issues of the diocese which may be affected by litigation. There is therefore likely to be confusion between the roles of the central diocese and management and the school management. This confusion is compounded where another party is involved, such as an insurer.*

*The Toowoomba Preparatory school council decided it would not contribute to any settlement. It would withstand the adverse publicity and differentiate the school in 2001 from the school in 1990. This approach worked for the school; its enrolments increased in 2002. It was not so successful for the diocese and Dr Hollingworth.”*

### **Insurance Contract**

*The diocese effected its insurance continuously with NZI up until about 2000. Incidentally, the continuation of insurance with one company has made the resolution of claims much less complicated than they might otherwise have been. . .”*

41.3 There has been much reference to the constraints which were perceived to be imposed by the insurance policy, such that it was considered inadvisable to make payments for counselling or to make apologies. The Board has already referred to this and to the ways and means that it considers this could have been overcome. The Board however does not doubt that the perception of the position with respect to insurance did constrain the diocese and its advisers generally. The relevant policy conditions were:

*“3. (a) The insured shall not without the consent in writing of the company make any admission, offer, promise or payment in connection with any occurrence or claim and the company if it so desires shall be entitled to take over and conduct in the name of the insured the defence or settlement of any claim.*

*(d) The company shall have full discretion in the conduct of any proceedings in connection with any claim and the insured shall give all information and assistance as the company*

*may require in the prosecution, defence or settlement of any claim.”*

41.4 Flower & Hart then referred to Dr Coman’s advice to Mr Lockhart in a letter dated 3 April 1991 in which he wrote:

*“The advice received from the insurers is they do not wish to be involved at this stage and would only become involved if an action was brought against the school. The insurers indicated quite clearly that the school should not make any payment or admission on the matter or the current public professional liability insurance cover it has with them would be voided.”*

41.5 Mr R S Ashton of Morris Fletcher & Cross (as it then was)

wrote to Mr Lockhart on 2 September 1991:

“As the writer mentioned in our discussions it is our view that the payments being sought from the school on behalf of CD’s mother and her daughter (and/or any other parents or children) ought not to be made because of the implications that it might have in relation to liability.”

41.6 The Solicitors then speak of what would have happened in their opinion if payment of counselling had been made.

*“If the diocese had made payment for a counsellor as requested in 1991, it would have risked two things:*

1. *It would have risked having the payments construed as an admission of liability in circumstances and in a legal environment where breach of a duty of care by the diocese or vicarious liability of the diocese for the actions of Guy had yet to be established.*
2. The insurer advised informally and formally through its Solicitors that the fee should not be paid because of the implications the payment might have in relation to liability and the consequential effect and admission of liability might have on the indemnity available under the insurance policy.

*It was for the diocese to decide whether any moral obligation to the students outweighed the cost of potentially admitting liability. The prospect was that payment of the counselling fees would effect the indemnity available under the insurance policy.”*

- 41.7 The Board accepts that the above opinions were held bona fide, and it is not to the point to repeat that there were ways and means whereby ex gratia payments of counselling could no doubt have been made without imperiling the insurance policies. That did not occur. It will be noted that in the St Paul’s cases, counselling costs at least in several claims were met by the insurer, and it was made clear to the student concerned that the payments were made ex gratia and not in any way constituting an admission of liability.
- 41.8 With respect to the control of the litigation, this was in the hands of the Solicitors for the insurer, and there was the complication that the policies provided no cover in respect of damages by way of exemplary damages. It is freely acknowledged that it was not until well into the trial that concern began to be had with respect to the prospect of exemplary damages. Ultimately, Counsel for the diocese warned of the risk of exemplary damages being in the hundreds of thousands. But the position was governed by the attitude of the school council which decided it would not contribute anything to the settlement.
- 41.9 This is referred to in a submission made on behalf of Mr Bernard Yorke. It appears from that submission and from the Minutes of the Diocesan Council that it did not at any time prior to the judgment being given in the

case, have referred to it in any formal way, and probably not even informally the action by AB was proceeding. This was probably because the insurers were conducting the litigation and the cost of any judgment would be met by the Insurers. The problem of exemplary damages, and that they were not covered by the policy was not adverted to.

41.10 To the question “was the Diocesan Council consulted with respect to the litigation” Mr Yorke’s Solicitors stated,

*“The property and finance board which is a sub committee of the diocesan council has delegated to them day to day management issues and this Board reports to the diocesan council monthly. The diocesan council has the power to overturn any decision made by the property and finance board.*

*It should be remembered that having regard to the fact that the . . . trial started on 12 November 2001 there would not have been anything of any particular moment to report to the diocesan council at its mid November meeting and the next meeting of the diocesan council was 13 December 2001 which was after the decision which had been handed down in the AB matter.*

*The property and finance board met on 13 November 2001 which is the day after the trial started and then it met again on 27 November 2001 which was after the Sunday conference held with (the Solicitors for the insurers and Counsel for the diocese and Mr York).*

In respect of the meetings of the property and finance board which occurred during or immediately after the trial, Mr York kept the Board informed and gave them a verbal report on recent events but there was no need for the Board to consider the issue formally because there was not any anticipation while the trial was actually proceeding that the diocese would be contributing anything whatsoever in respect of any eventual damages award because it was regarded peculiarly as a Toowoomba Preparatory School matter.

*It was the school council in the form of Mr Howden or Mr Chris Slate who spoke on Mr Howden's behalf when Mr Howden went overseas part way through the actual trial to give instructions to Flower & Hart as to what money the school was prepared to contribute to the action particularly as the issue of exemplary damages escalated effectively out of no where during the trial itself."*

41.11 The Chair of the School Council said that prior to going overseas, she was hurriedly required to contact School Council members which she thought was an unsatisfactory way of dealing with the matter.

41.12 Mr Yorke further states:

*"There was never any issue up to the end of the trial that the diocese would have any role in financially contributing to any settlement.*

*. . . The school council had resolved that they were not going to pay anything towards any settlement.*

*Mr York had long experienced the position during the ten years he had been general manager of the diocese that the diocese does not contribute to school issues including payments in respect of settlements derived or Court awarded damages affecting a school."*

*41.13 There was a major under estimation of the potential for an exemplary damages award, and the School Council does not appear to have had any real appreciation of that potential. In the event, the diocese had to attend to the payment of the exemplary damages figure and arrangements had been made for the payment back of this amount by the imposition of a premium levy.*

41.14 Following the verdict the diocesan council then considered whether an appeal should be lodged and pursuant to strong counsel's advice decided not. There was a detailed consideration of the state of potential claims against the diocese essentially being the claims in respect of St Paul's. Subsequently the litigation sub-committee was formed and this produced a much more efficient and controlled process, than that which had attended the handling of the claim by AB.

42.1 Mr Yorke and the Solicitors, Flower & Hart, have made it clear that Dr Hollingworth was not involved in any way in the trial nor in any aspect of the preparation of the trial. Flower & Hart state that they had no direct contact with Dr Hollingworth during the course of the trial and that they were instructed on 22 November 2001 that the Governor General was concerned about the evidence being given, which was that of Ms Christine Munro who had written to Dr Hollingworth on 25 December 1990.

42.2 Flower & Hart state that at the meeting between Solicitors, Counsel and Mr York on 25 November 2001, an issue that was canvassed briefly was whether Dr Hollingworth should be called as a witness, and it was decided not. No instructions were taken from Dr Hollingworth, and consequently evidence in regard to him was essentially unchallenged. Dr Hollingworth would have stated had he been asked that following the phone call of Mrs Joy Connolly, he did attempt to contact, the parents of AB without success.

## Conclusion

- 43.1 The Board, as has already been referred to, considers that the claims in respect of Guy were not handled fairly, reasonably and appropriately, first because as the jury's verdict emphatically declared, the diocese and its employees, principally the Head Master, Mr Brewster and other teachers and nurses at the school, had failed to take reasonable care for the safety of the students in their custody and control.
- 43.2 Secondly, once the school and the school council were aware of Guy having been charged and subsequently suiciding, the matter was not handled fairly, reasonably and appropriately, in that there was never an unconditional acceptance of the truth of the complaints of AB and CD, and consequentially a failure to unconditionally apologise to the students who were abused, and to provide support and assistance including the reimbursement for counselling costs.

Dated the twenty-second day of April, 2003

Peter O'Callaghan Q.C.  
Chairman

Professor Freda Briggs  
Member

# **BOARD OF ENQUIRY**

**into past handling of Complaints  
of sexual abuse in the Anglican  
Diocese of Brisbane**

**Report  
Complaints (many)  
v.**

**Kevin Lynch (dec'd)**

**Complaint No. 2**

- 1.1 St Paul's School ("St Paul's") Bald Hills was a boys only school until 1992, when it became co-educational. Mr. Gilbert Case was the Headmaster from January 1979 until 2001.
- 1.2 In 1988, as a result of a school evaluation report, the position of School Counsellor was created by the School Council. The position was advertised in the Weekend Australian on 5 and 6 October 1988 and Kevin Lynch ("Lynch") successfully applied for that position.
- 1.3 Lynch had previously been employed as a teacher at Brisbane Grammar School ("the Grammar School"). He had taught as English/Economics teacher and at the start of 1976 he became the Student Counsellor after the retirement of the previous Counsellor.



- 1.4 Mr Case believed that Mr Lynch had performed his duties at Brisbane Grammar School very well, and knew of no reason why he would have been unfit for appointment to St Paul's. It now appears that Lynch sexually abused large numbers of Grammar students whilst he was employed there as a teacher counsellor.
- 2.1 The Board has not seen any evidence of enquiries being made of the Grammar School, or if references in respect of Lynch were provided by the Headmaster or anyone else at Grammar. But the Board is satisfied that if enquiries had been made of Grammar, they would not have revealed any suggestion of misconduct by Lynch.
- 2.2 The tragic fact was that between 1990 and 1996 whilst acting as School counsellor at St Paul's, Lynch had engaged in repeated sexual abuse of students, who came to him for counselling. With the ruthlessness and amorality of the paedophile, he took cruel advantage of his position of trust, and gained perverted sexual gratification. Many complaints were eventually made, and more than twenty-five have been subject of court proceedings. Such proceedings have been settled upon payment to the former Students of substantial amounts as compensatory, and in some instances exemplary damages. There are others who have complained they have been sexually abused, but have taken no action. No doubt there are others who have been abused but have remained silent. It is impractical and unnecessary to refer to all the complaints. They have an unfortunate similarity. In order to

provide a general description of the abuse, in addition to the detailed evidence of Student 1 and 2, there is set out in Schedule 1 the statements of Students 3 to 8.

### **The Complaint of Student 1**

- 3.1 Set out below is the detailed statement made by a student who will be called Student 1. This Student's complaint to the Police, and consequent investigation first revealed the turpitude of Lynch.
- 3.2 Student 1 was referred to Lynch because of his problems at school. During 1993 he was repeatedly abused by Lynch. He left school at the end of that year. In October 1996, having discussed with a workmate and his father what had occurred, Student 1 contacted a policeman who was known to him and was later referred to Detective Chapman. Student 1 gave a recorded interview set out below. The description of the abuse is necessary, but it may be distressing reading for some.

*“Chapman: Right, now I understand from our conversation which was relatively brief on the 31<sup>st</sup> of October at 4.30 p.m. that you've got some matter that you wish to raise with us with respect to a number of instances relating to procedures or dealings that you had with a particular fellow at St Paul's Anglican School . . . between 1992 and 1993 is that right?”*

*Student: That is right.*

*Chapman: When did you commence schooling at St Paul's Anglican School.*

*Student: 1993. . .*

*Chapman: You told me on the 31<sup>st</sup> of October that you had a problem with respect to certain actions by a man called Kevin, a Student Counsellor at that school, is that right.*

*Student: Yes.*

Chapman: *When did you first meet Kevin Lynch.*

Student: *I would have met Kevin Lynch in about Year 9 with my House Master. She viewed our actions through with detentions and she sent me there for counselling because I was constantly in trouble and wasn't working.*

Chapman: *Just come back now, it was Grade 9 that you first met Kevin Lynch. Would you tell me who was the first person, the first teacher to send you to him.*

Student: *Mrs Crombie. . .*

Chapman: *What was the reason why she sent you there.*

Student: *Basically for counselling for actions at school with my work and discipline. Why I was different basically. . .*

Chapman: *I want to put your mind back then to the first time that you ever went into his office. What happened.*

Student: *He sat me down and he talked to me why I was getting into trouble all the time, why I had trouble with female teachers. .*

*(The student then described the room where he met with Lynch)*

Chapman: *Would you tell me then what occurred on your first contact.*

Student: *Well we just chatted and he basically worked on friendship. I thought he was a really really nice guy. I thought he was a top bloke. I wanted to see him again because he was a good guy. You could speak about anything in front of him and he said "You're going to have to come back and see me" and that's basically what I remember the first time I went there.*

Chapman: *How long were you in his office the first time.*

Student: *I was in there for 47 minutes.*

Chapman: *How do you know that.*

Student: *That's how long the period was. . .*

Chapman: *O.K. so about three days later you went back to his office. Lynch took your blood pressure, how did he do that.*

- Student: He had his whole little set up and he had those things that you put in your ear to take your heart and he told me to breathe in and stuff like he was testing my lungs like listening to my lungs and stuff, and I was a smoker at the time and he was saying that if I don't give up smoking I'll have a surgeon cutting into me by the time I'm 17 and made me stand up in front of him and he would basically go through hypnotism.*
- Chapman: O.K. so on the second visit did he start to hypnotise you.*
- Student: That is correct.*
- Chapman: . . . How did he do that.*
- Student: He stood me up without my shoes on.*
- Chapman: Did he get you to take your shoes off.*
- Student: Yea he said, take your shoes off and stand up in front of me with your ankles together and arms straight out. . .*
- Chapman: You've got your shoes and socks off.*
- Student: Standing there with heels together and arms out, he unbuttoned my shirt and pulled it out because it was always tucked in and just, he hypnotised me.*
- Chapman: Then what.*
- Student: I woke up.*
- Chapman: Did you go to sleep.*
- Student: Yea basically he hypnotised me, it's a blank, it's a blank, all the questions and shit. He didn't touch me or do any things because he was working on me. He was giving me time. Like each time, he'd go a step further.*
- Chapman: O.K. so on this occasion he totally hypnotised you. Are you satisfied of that.*
- Student: Yea he was basically getting my confidence.*
- Chapman: And what happened then, the next thing that occurred of any significance.*
- Student: He would sit me down in a fold back chair which you would push with your feet up and back resting.*

Chapman: *Was this on this occasion.*

Student: *This is on this occasion. He had a towel on the seat and nothing of any significance happened on this occasion. It was just about ten more occasions of hypnotism just lying there and getting asked questions. He would push his hands on my pelvis, around my stomach area and he would say that it's very tense. He would push on certain parts of my stomach, does that hurt, and just speaking shit.*

Chapman: *When did he commence pushing your stomach and so forth. On the second visit.*

Student: *Yes.*

Chapman: *When did he get you to sit on a chair.*

Student: *On the second visit . . .*

Chapman: *What happened then, so you've set out that there was a number of occasions that you went to his office and the same thing happened, is that correct.*

Student: *He hypnotised me, laid me down and take my blood pressure and stuff while I was out to it and each time he'd get more and more towards the belt line of my pants with his hands around the stomach area and he would say "See this finger here" and he'd touch my bum and say, "If you're not comfortable with anything I'm doing just put your thumb up and I'll stop".*

Hopkins: *What was he talking about, or what questions does he ask when he has his hands on your pelvis and stomach area, can you remember.*

Student: *Just an ahh and ooh as though that's not right, as though you're pretty stressed out down here, he was testing*

Hopkins: *How long would he carry on these actions for.*

Student: *Twenty minutes at least 20 to 30 minutes. . .*

Hopkins: *Was he doing this through your clothing.,*

Student: *Well he had unbuttoned my shirt by then.*

Chapman: *Did you have a singlet on underneath.*

Student: *No bare skin.*

Chapman: *So he's pushing his hands over your bare skin.*

Student: *That is correct.*

*(The Procedures are then described and the interview then proceeds)*

Chapman: *Well I'd like you to take us through it. When was the first time that he started to get you to take all your clothes off.*

Student: *It would have been about after four more hypnotism's of going there and being put in the chair, he'd get me down to my underpants and I'd just be standing there in my underpants.*

Chapman: *How long were you going to him before he commenced to go further with the procedures.*

Student: *Well each time he'd go further and it would have been about three times that I'd be standing there stark naked.*

Chapman: *On the first occasion that you went to him you told us that he actually undid your shirt and pulled your shirt out.*

Student: *Yes.*

Chapman: *From there on in what did happen after that.*

Student: *Well he would take off my shirt, he'd undo my belt, he'd undo my button fly and seeing that my shoes were already off, just like stand one leg, he'd stand my leg up, take my long school pants and basically I can't remember him taking off my underpants, I can't remember that at all, but he'd have me lie down in the chair naked.*

Chapman: *Alright so each time you went to him there was a progression that you'd lose more clothing.*

Student: *That is right.*

Chapman: *So eventually on these visits you were down to what amount of clothing.*

Student: *He'd make me lie there naked and then he'd ask me questions and then afterwards he said to me, "I think if I poured baby oil there I reckon I wouldn't have been able to stop you I reckon you would have just gone for it" and then the next time I went there the same thing happened, naked lying in the chair.*

Chapman: *Come back to this, he's got you to a point where a lot of your clothing has been taken off. Is this while you were hypnotised or not.*

Student: *While I was hypnotised.*

Chapman: *How were you aware that you had clothing on.*

Student: *Well you would get a draught, you'd be free, you wouldn't have anything hanging off you. It would send you more out of it because you'd be so relaxed that nothing would be touched and you'd be free.*

Chapman: *After you came out of the hypnotic state was there anything that would indicate to you that you had your clothes off.*

Student: *Yes.*

Chapman: *What was it.*

Student: *I'd get dressed.*

Chapman: *What was the standard procedure with respect to hypnotising you, and then what would happen, how would he finish up.*

Student: *He'd just basically take my clothes off, lie me down, take my blood pressure, ask me questions, push on my pelvis and as I was lying there naked I would get an erection because he makes you feel really horny, and he would touch something on my fingers and try and make me lose this erection through blood pressure and I would try and lose my erection by thinking about other things.*

Hopkins: *Do you remember what he'd put on your fingers.*

Student: *Something that took a pulse out of my fingers.*

Hopkins: *Did it have a little red light on it or an illuminated light on it.*

Student: *I think so.*

Chapman: *Now he said that he would never take your underpants off before, do you recall saying that.*

Student: *No he would take my underpants off.*

Chapman: *Did he take your clothes off or did you.*

- Student: He did I didn't have any part of it.*
- Chapman: Can you give me any reason why you didn't tell him to stop.*
- Student: Because I thought that this relaxation treatment he'd be talking about because he'd have his pulse machine, he'd be listening to my heart and my lungs and he'd have this shit on my finger. I just thought you know it took me five years to realise.*
- Hopkins: How many times did this occur.*
- Student: Many times.*
- Chapman: I'd like you to put your mind back then to the first occasion that you got all your clothes off and what happened.*
- Student: I think you'll find out those questions if you hypnotise me and ask me questions, because it's a blank.*
- Chapman: O.K. what do you recall of what had occurred the first time that you had all your clothes off.*
- Student: Just questions, pushing on my stomach.*
- Chapman: Now you mentioned before there was something about baby oil, what was that.*
- Student: That was a particular occasion that he got my confidence, he hypnotised me, made me lie down and basically straight after I was laid down naked he got towels out and laid them all around me, just poured baby oil all over me. He said "Go for it, go for it". I can distinctly remember this because it was just something like wow. He said "Go for it". I didn't want to move my hand, he got my hand and put it on.*
- (There is then a description of baby oil being put on)*
- Chapman: What happened then, when he got the baby oil, what happened then.*
- Student: He got the baby oil and put it on me.*
- Chapman: How did he put it on you.*
- Student: Just squeezed it on, didn't touch me, doing that.*
- Chapman: What happened then, whereabouts did he squeeze the oil onto.*



- Student: My penis.*
- Hopkins: Over any other part of your body.*
- Student: No.*
- Chapman: And what happened then.*
- Student: And then he said "Go for it". And got my hand and put it on my penis and I didn't move my hand and I just went "Oh shit" and I'd never touched baby oil before and I was feeling what the baby oil was like in my fingers and then he got his hand and his index finger and thumb touched 4 centimeters down from the top of my penis to see how hard my erection was and by then I started going for it.*
- Chapman: O.K. So Lynch put your hand on your penis.*
- Student: That is correct.*
- Hopkins: Was your penis erect at this time.*
- Student: That is correct.*
- Chapman: Which hand did he put on your penis.*
- Student: My right hand.*
- Chapman: On this particular date when this occurred is there anything that you can recall or may assist you to recall that day, was it towards the end of the year, the middle of the year.*
- Student: Well I could always remember the day it's just that I always thought it was right. I always thought that it was normal for him to do that because he'd got my confidence with this relaxation treatment and that's why I never thought of it.*
- Chapman: Is there anything at all that may assist you to recall the day that he first put the baby oil on.*
- Student: No way. . .*
- Hopkins: Did you ever discuss this procedure with him.*
- Student: Yes, he would say he would just speak about it with a smile on his face as though it was cool, it was alright and everything was happy but I can't remember what questions.*
- Chapman: So he put your right hand on your penis.*

*Student: Yes.*

*Chapman: How did he do that do you recall.*

*Student: Just had me by the wrist and just lifted my hand and put it on.*

*Chapman: What did he do then.*

*Student: He pinched the top of my penis to see how erect it was.*

*Chapman: What part.*

*Student: Just under the head of the penis.*

*Chapman: On the top or the bottom, underneath it.*

*Student: Underneath it.*

*Chapman: What did he say.*

*Student: He didn't say anything that I can recall.*

*Chapman: What happened then.*

*Student: As I was masturbating he'd go and sit in his chair at his desk and I can recall the phone ringing and he'd be speaking to someone for a while.*

*Chapman: When you say masturbating what do you mean by that.*

*Student: Masturbating with the baby oil.*

*Chapman: Describe to me what you understand by masturbating.*

*Student: Pulling, pulling myself, giving myself an orgasm.*

*Chapman: And how did you do that exactly.*

*Student: By stroking my hand up and down my penis with this baby oil.*

*Chapman: Lynch went and sat down while you were doing this.*

*Student: At his desk.*

*Chapman: How far away was the chair that you were sitting in from his desk chair.*

- Student: Three metres, but he'd be originally be sitting beside me and then he would move over to the desk. He was only sitting beside me for a little while.*
- Hopkins: Did he say anything to you while you were masturbating.*
- Student: No he wouldn't say anything.*
- Hopkins: Was he fully focused on what you were doing.*
- Student: I don't know. . .*
- Chapman . . . you were describing how you were on a chair and you were masturbating. He was speaking on the phone but he put the phone down and then what happened then.*
- Student: He sat there for a little while in silence and then the door bell rang. He pressed the intercom and said "Come in". He stood up, closed the door, walked towards the door and a person came in whom I believe to be Mr Wright who was the Senior Master at St Paul's who was basically the discipline Master second in charge. He talked to him. I don't know what about, just a talk. I'm sure that Mr Wright didn't know what was going on in the next room in his office but they talked about something and Mr Wright left and then he came back again and by then I'd finished and Mr Lynch got the towels, cleaned up, wiped whatever I'd done.*
- Chapman: When did you ejaculate. While he was in the room or out of the room.*
- Student: I don't know.*
- Chapman: Did you ejaculate.*
- Student: I did ejaculate yes definitely and he got the towels, cleaned me up and then he would slowly wake me up.*
- Hopkins: How would he do that.*
- Student: He would say "I want you to slowly open your eyes as I count backwards from ten". Just more of his hypnotism stuff (inaudible) me. . .*
- Hopkins: Did you say anything to Mr Lynch about being naked and being on the chair.*
- Student: No.*

- Hopkins: *The baby oil was it still present on your body or on your hands.*
- Student: *No it was all cleaned off by the towels. I can remember being able to feel it. I could still feel it around my penis when I was dressed. I was emotionally involved thinking "I don't know about that". This was what was going through my mind.*
- Hopkins: *Did you bring it to the attention of your Head Master or any of the teachers.*
- Student: *Never, I thought it was fine. It was common knowledge around the school that Mr Lynch hypnotised people. Basically everyone that went in to him if he was a regular he got hypnotised.*
- Hopkins: *What about your parents did you bring it to their attention.*
- Student: *They knew I was going to see him. I told them that I was stressed out but I didn't tell them anything in any detail. They didn't know about the masturbation at all.*
- Hopkins: *Did they know what procedure he was using the hypnosis.*
- Student: *No nobody did.*
- Hopkins: *Only the people who went to see him.*
- Student: *That's correct.*
- Hopkins: *This procedure where you've described where your standing and he hypnotised you, you removed your clothes and then put you into a chair to where baby oil is put onto your penis and the action of masturbation occurred. How many times did this happen.*
- Student: *Once.*
- Hopkins: *It was only the one occasion.*
- Student: *Yes and I would have seen Mr Lynch about two more times after.*
- Hopkins: *During this period of time of seeing Mr Lynch your clothes would normally be left on.*
- Student: *No see he was working slowly each time.*
- Hopkins: *How many times have you been naked in front of Mr Lynch.*

- Student: About 20 times.*
- Hopkins: And on these 20 occasions you were just lying on what you described as a reclining chair just naked.*
- Student: Yes.*
- Hopkins: On any of these occasions did you have an erection.*
- Student: Yes every single time.*
- Hopkins: Did Mr Lynch encourage you to masturbate.*
- Student: Yes all the time.*
- Hopkins: And would you masturbate.*
- Student: Well that one occasion I did when I went home and so on.*
- Hopkins: Whilst in his presence in the reclining chair on these occasions you've described some 20 times did you beside the occasions that you've previously explained to us did you masturbate.*
- Student: No.*
- Hopkins: So you are lying on the chair basically naked with an erection.*
- Student: Yes.*
- Hopkins: At any time did Mr Lynch touch you.*
- Student: On that one occasion when I masturbated to see how hard my erection was and I'm very aware of what had happened and I was waiting for that to happen and if it did I would never forgive him and did.*
- Hopkins: And that's the only time that he's touched your penis.*
- Student: That's correct.*
- Hopkins: Did he touch any other part of your body apart from what you've described previously.*
- Student: No.*
- Hopkins: At any time did he remove any of his clothing.*

- Student: No never that I know of.*
- Hopkins: So most of the time you were in the chair naked he was close by.*
- Student: Sitting beside me taking my blood pressure asking the questions.*
- Hopkins: What were the questions involved. Were they questions of sexuality to arouse you.*
- Student: Always.*
- Hopkins: In what manner would he talk to you.*
- Student: Just normal tone.*
- Hopkins: Can you remember any of the conversations.*
- Student: I never spoke.*
- Hopkins: Can you remember any of the conversation that he was saying and in what manner he was talking to you.*
- Student: No it's a blank.*
- Hopkins: You've previously mentioned that the discussions were of a sexual nature, were they describing things or how you felt.*
- Student: How I felt. . .*
- Chapman: Now you've said that this was the only time that he got you to masturbate in his office. Now you've said that on at least 20 occasions that you can recall you were in his office and he had you naked lying on the couch and you would have an erection is that right.*
- Student: That is right.*
- Hopkins: At any time when you had the erection did you have the urge to masturbate.*
- Student: Very much.*
- Hopkins: And what stopped you.*
- Student: I don't know.*
- Chapman: Did he do anything to you at all to get you to try or try and make you masturbate.*

- Student: Yea well he would do something to make me horny like that.*
- Chapman: And what would he do.*
- Student: I don't know what he would do it was just in his procedure through it.*
- Hopkins: These times you were hypnotised.*
- Student: Every time.*
- Hopkins: When you were hypnotised how did you feel.*
- Student: Very very relaxed. Everything was blank the world wasn't even there.*
- Hopkins: Did you feel that you had control of yourself.*
- Student: Yea.*
- Hopkins: If he had told you to do something would you have done it.*
- Student: Yea.*
- Hopkins: If he told you to masturbate on these occasions was there any reason why you wouldn't do it.*
- Student: No I didn't but most of the time I wanted to. . .*
- Chapman: Alright I'm going to ask you some things. How many other students that you personally know of would visit his office.*
- Student: How many.*
- Chapman: Yes.*
- Student: About ten.*
- Chapman: Have you spoken to them about what happened to you.*
- Student: That is correct.*
- Chapman: When did you speak to them about it.*
- Student: During the week every single day I've been seeing somebody new.*
- Chapman: That's this week.*

*Student: This week.*

*Chapman: What have they told you.*

*Student: They told me that Mr Lynch hasn't gone as far as what he did with me but they've told me stories as though he's pushed in their stomach before. He hasn't actual hypnotised them. On occasions he's had one person come in and he's just chatted about masturbation the whole time talking about tossing and shit like that. Somebody else has told me that they may have been hypnotised and he has opened up the front of their pants and looked to see whether they had an erection or not. . .*

*Chapman: Do you know of any other student that went there that he did anything to or had masturbated a student.*

*Student: No I don't. . .*

*Hopkins: What has made you come forward after a period of time to explain to the police what's happening.*

*Student: I was at work and I was sanding away and it came to my mind and as I've been getting more mature over the years I've thought about actually picturing myself in front of him masturbating, it's just not right. It just clicked after five years that that wasn't right and I spoke to a guy at work about it and I told him exactly what happened. He said, "no, no, no, no, that's not right".*

*Chapman: Who did you speak to at work.*

*Student: A friend of mine. ...*

*Hopkins: Have you discussed it with your parents.*

*Student: My father.*

*Hopkins: And when was that.*

*Student: The day it happened. (My friend) rang my father and said if I didn't do anything (inaudible) I'd go and pay him back.*

*Chapman: When did you speak to your friend about it.*

*Hopkins: How long ago was it.*

*Student: It was Tuesday.*

*Chapman: Of this week.*



- Student: Yea.*
- Hopkins: The same day that you rang (Senior Constable) Tony Parsons. . .*
- Chapman: So Lynch has performed this act on you and you are aware of other students as well who have at least taken their clothes off.*
- Student: Yes.*
- Chapman: Would you be able to supply us with the names and particulars of those other students.*
- Student: Yes (naming a student) I can ring you with the addresses.*
- Chapman: And the other one.*
- Student: (Naming two students) and when we get a Year Book I'll be able to supply more names.*
- Chapman: What have they told you.*
- Student: All these stories I've just said, pushing on the pelvis.*
- Chapman: Stripping.*
- Student: No stripping there.*
- Hopkins: Are there any students that you've spoken to that have been stripped.*
- Student: Shirts have been undone and shirts have been pulled out and the penis looked upon.*
- Hopkins: On who.*
- Student: J. . .*
- Chapman: You are prepared to assist us with the enquiries.*
- Student: 100%.*
- Chapman: What do you hope to achieve by making this complaints.*
- Student: Stopping this guy from whatever he's done.*

3.3 Following the interview it was arranged by the police that Student 1 would be “wired up” and visit Lynch and record their conversation. This took place on 16 November and below are set out extracts from a lengthy conversation.

*“Lynch        It’s nearly half past 8. I’ve got to ring Gilbert at half past 8 to say you haven’t fucking murdered me. O.K. don’t worry about it you’re so remote from the real world it doesn’t matter. You know that and he knows that because your Head Master doesn’t know what’s going on in the real world. I do, I do and I have people ringing at 2 o’clock in the morning and they’re bloody stoned and I’ve said “Where are you” “Are you in Brisbane”, “Yea I’m in Brisbane”. I say, “Are you on the corner of walk or don’t walk, are you in Brisbane and they said yea, walk and don’t walk. I say well that doesn’t tell me anything. What pub were you last in or what nightclub were you last in (incoherent) and I get in the car and pick them up and bring them back here especially if they’re school kids. You might be horrified by this but I’m going to be totally honest with you. I strip off, I get in the shower with them because I can’t hold them in the shower if I’m not fucking stripped off, I don’t want to go up their bum, I’m behind them. I don’t want to go up their bum but if I don’t strip off and get in the shower with them and then shower, you dry them, you put them on the bed and then ring their parents.”*

*Male:            You used to make me feel (inaudible) at the office.*

*Lynch:          Yea good thank you.*

*Male:            Standing there naked made me feel free and relaxed.*

*Lynch:          Good you didn’t feel you were pressured.*

*Male:            No. No, no not at all. Not even when you poured that baby oil on me I wasn’t the slightest bit.*

*Lynch:          Good I remember saying to you at the time, “Is this alright”. And you said “(Incoherent).”*

*Male:            It was an experience mate ah, I’d never touched baby oil before. I’d never touched baby oil before.*

*Lynch:          **You realised I could have got seven years jail for it. You realise it’s a criminal offence of a major nature.***

- Male: **Making me masturbate with baby oil.**
- Lynch: **Yes a criminal offence of a major nature. At least seven years with a person involved and depending on the judge it could be 14 years.**
- Male: *Really. I thought it was good.*
- Lynch: *Of course you did, of course you did, and I wanted you to;*
- Male: *I can remember you testing to see whether my erection was hard like my girlfriend she wants to know (incoherent).*
- Lynch: *The reason it's the difference is how long it takes you to come. The only significance of it is how efficient it is and what you're going to do with it. If you were fucking your girlfriend, I'm sorry to use the old English word fuck, if you're going to fuck your girlfriend from your point of view it's better to be as hard as it can because it will take less time.*
- Male: *I can remember testing with your finger just seeing how hard I was is there any significance whether.*
- Lynch: *I wanted to see you'll find that homosexuals . . . and when you press you can get in about half an inch before the (inaudible) get hard. Heterosexuals (which you certainly are) there's no question about that . . . they're hard right from the outside, right from the very outside they're hard. Now you need to know that those tests that were done proved to me . . . you've got two problems. One problem is that in terms of your personality you are very very sensitive and very kind and very (inaudible). . .*
- Male: *Only if I have to.*
- Lynch: *If somebody attacks you, yea if someone attacks you you punch them on the nose and so would I. People see you as very negative, now you're not and you never have been and the interesting thing was that when I tested the erection of your penis from the outside in it was so heterosexual that it wasn't funny. ... (Emphasis supplied)*

## 12 December 1996

3.4 This was a further interview between the student and Lynch.

Lynch tells the student that he has been anally raped by two persons and . . .

*"Lynch: I had a guy here this morning and I went to his . . . he's not a St. Paul's guy you don't know him a fortnight ago and he's a paranoid schizophrenic and I went to bed at midnight and after I went to bed another paranoid schizophrenic came a guy that had been in a half way house with him and they went to a party and at the party they had a lot of speed and they arrived back at 5 o'clock in the morning. And you don't tell anybody this you understand. . . they raped me . . . about a week and a half ago and they both share needles so I may die in ten years. I've had what's called the initial blood test to see what the initial blood test is. . .*

*Male: I've got another thing I want to ask you. You said to me last time that you would get seven years imprisonment for like making me masturbate. Why.*

*Lynch: I said to you what I said. I thought it was important, I thought it was important that you should be prepared to let yourself go that you should have sufficient trust. I know you're coming to terms with trust now. I mean if you weren't going to come to terms with trust you wouldn't be back here tonight. So you are coming to terms with trust. You're making it very hard to come to terms with the trust. I don't understand why you went to so much trouble yourself. . .*

*In 24 years you were probably one of the most uptight kids. Now what you have to understand, you have to understand that you had to let yourself go physically, sexually, without anger and without guilt. Now what's happened is that I suspect from what you said last time and I suspect from what you say tonight is that it wasn't without guilt. I suspect that there was a certain degree of guilt. O.K. I can't do anything about that certain degree of guilt. I'm not sorry, I'm not sorry about anything that happened but also I've been sorry. I wouldn't tell you any lies but I have to tell you that that activity as far as I'm concerned, not as far as you're concerned, that activity is an illegal act. It's an illegal act which breaks the law. It wouldn't break the law if you had been over, the Queensland law is funny, the Queensland law is 16 for a girl and 18 for a boy. You can have sexual knowledge with a girl after 16 I think. I'm not sure the various State laws are all different. I think the Queensland law says sexual knowledge of a girl after 16 sexual knowledge of a boy after 18. So you weren't 18, so I broke the law and I'm not sorry and I don't apologise but I want you to know and this is very honest, I want you to know there was nothing in it for me. I didn't get anything out of it. That's not my style. . . You didn't really think that anything that's ever really been done there was wrong but what you did*

*begin to think about at that time I think correct me if I'm wrong, what you did begin to think about that time was why, why. Now that's great. You think that's awful, but it's great because what that made you do . . . I was totally aware. I was exposing myself completely to seven years jail and I'd do the same again. . . .*

*So far as you're concerned one of your problems was this. Is there anybody in your family that is religious.*

*Male: Mother, father.*

*Lynch: Yea you were terribly worried about masturbation. You thought wanking was sinful. Am I right. I'm fucking good. I shouldn't say this about myself but it's true. I'm fucking good. You thought masturbation was sinful (incoherent).*

- 3.5 These interviews provided powerful evidence, and naturally the police acted on it.

### **Lynch is charged**

#### **4.1 On 22 January 1997 Lynch was interviewed by police and then charged with a number of offences namely:**

- "(i) that he unlawfully and indecently dealt with . . . (Student 1) a child under the age of 16 years; (one count)*
- (ii) that between the 1<sup>st</sup> of January 1992 and the 31<sup>st</sup> of December 1993 Kevin John Lynch "Unlawfully procured one (Student 1) under the age of 16 years to commit an indecent act". (six counts).*
- (iii) and on charge 9 was that "Lynch unlawfully assaulted one (Student 1) and that such assault was of an aggravated nature in that the said (Student 1) was a child under the age of 16 years." (one count)*

### **Lynch Suicides**

- 4.2 Lynch died by his own hand on 23 January 1997. Mr Case describes subsequent events,

*“On Wednesday 22 January 1997 I arrived at school . . . and (shortly after my arrival) I was informed by the School Registrar that Kevin Lynch had left the school in the company of some police, advising that he was going with them to assist them with their enquiries. ....”*

*“Some time later Detective Craig Morrow and Sergeant Greg Pershore from Boondall presented themselves to me and handed me a search warrant. They advised that Kevin was at Boondall police station and that he would shortly be arrested and charged. They indicated that the charge was one of “child exploitation”; the only details they were prepared to advise were that the offence may have included fondling.*

*I was not allowed to keep the warrant, but was allowed to read it, it indicated that the Complainant was student 1, who had attended from year 1991 to year 10, 1993. Detective Morrow suggested that he had been expelled. I replied that I did not believe so. My memory in fact is that there was a mutual decision that Student 1 not continue at the school. He had a history of disciplinary problems.*

*Detective Morrow told me that he was aware that towards the end of last year Kevin had told me he was concerned about a client whom he was meeting at his home. This person he feared might assault him. (He had been assaulted by clients at home, and had been cautioned not to place himself in that situation, but continued to do so.) I had been concerned in turn and had rung Kevin during the evening to make sure he was alright. Detective Morrow knew that Student 1 was the person who had been in Kevin’s house when I had rung. Later information indicated that he had learnt this either because the Student 1 had had a concealed tape recorder and/or the telephone had been taped.*

*The warrant indicated that it was believed that Kevin’s “blue Collins” appointment diary for 1993 would contain evidence to support Student 1’s allegations. I therefore accompanied Morrow and Pershore and a police photographer (Allan Kennell) and another Detective whose name I do not remember. I took them to Kevin’s office where they searched the three rooms in my presence. One of them looked in the client card file, but found no card for Student 1. The diaries were found on a shelf in the central room. Although nearly all the diaries were “blue Collins” the two that were found for 1993 were of a different make. These were photographed and taken away. I saw the date on one of the two diaries was 1993. Kevin’s method of using the diaries was well known to be that students wrote their own appointments in the books. I do not think that while they were in the office the police found any page which actually showed Student 1’s name. Detective Morrow also*

*instructed the photographer to take some general photos, including what he called "the relaxation chair" and a light switching system which Kevin used to indicate to callers whether he was busy or not. Detective Morrow may have thought that it controlled the ability to open the door, but I pointed out that it did not.*

*The police then advised me to contact the diocesan authorities. They explained that Kevin would be arrested, charged and taken to the watch house and probably released on his own undertaking to appear before the Magistrate at some time in the future ... ..*

*About half an hour after leaving Detective Morrow rang. I was unavailable and he spoke to Roz White who was a former teacher of his in Bundaberg. He mentioned to the switch girl the name of the student about whom he wished to make enquiries. Roz declined to provide information, and as I was still busy he left a message for me to ring back. He wanted to know all the years of student 1 at the school. He then said that he would need to come back and get the other diaries for those years.*

*While I was on the phone I confirmed that Kevin had had access to a Solicitor, but I formed the opinion that this had been over the phone and that the Solicitor was not necessarily present during the police investigation. I also reconfirmed that Kevin would be released from the watch house that night. Detective Morrow indicated that they were still typing up the charge(s) and that they would then take Kevin to the watch house.*

*Later that evening the Bursar advised me that Kevin had returned to the school at about 17.00, and that the police had gone with him to his office, presumably to collect the other diaries. Kevin also spoke to Jack King and Fred Danielsen during this time and indicated there was no problem.*

*That evening at about 19.30 Kevin rang me at home. My wife answered the phone and had a brief conversation with him but he asked to speak to me. He said in a fairly business like manner that he was alright, that he had an appointment with his Solicitor first thing on Thursday morning, and that he would come to see me at about 11.00 hours. He indicated that when we met he would hand me his keys and take leave without pay "until this thing blows over". I pointed out that there were options and that even if he did take leave it would not necessarily have to be without pay, but he did not wish to prolong the conversation. We hung up agreeing to talk through the issues when we met.*

*When Kevin did not keep the appointment I became concerned, the more so as I had learnt by then that his car was not in its usual place in the carport. I assumed he had gone somewhere else. My increasing concern led to my (a) asking Father George Henry who*

*lives close by to check to see if he was alright when he went home on Thursday; and also (b) to my eventually reporting him as missing. I first approached, as advised by a Solicitor, the arresting officer, but he claimed to be powerless to accept my attempted report. I then rang Sandgate police station and shortly afterwards Constable (Sergeant ?) Gavin Rowe and another officer came to see me and received the report.*

*Shortly after they had left me Father Henry's wife rang me to say that her husband had found Kevin's body in his car in the garage with the engine still running."*

4.3 In April 1997 Mr Case described his state of mind following Lynch being charged and subsequently suiciding.

*"Whilst both Father Henry and I had been aware of a complaint and charges laid against Mr Lynch the day before his death, we had both believed that complaint and those charges to be entirely vexatious, vindictive and without foundation, until confronted with the stories the three boys told."*

In a letter to the Board, Mr Case's solicitors stated that he did not speak for Fr Henry

4.3.1 Fr Henry, has advised the Board that he had never held the belief attributed to him, and had never stated to anyone and particularly to Mr Case that he did so. The Board's invitation to Mr Case through his solicitors, to explain why he made that attribution to Fr Henry, has received no response.

4.5 Dr Peter Coman says that Mr Case informed him of Lynch having been charged and his subsequent death. Dr Coman informed Mr Bernard Yorke and Dr Hollingworth. Whilst the latter was thereafter advised of the progress of dealing with the claims, he was not otherwise involved.



4.6 His solicitors described his role,

*“... Dr Hollingworth played no part in the handling of any complaint of sexual abuse by the late Mr Lynch. St Paul’s School was, at all relevant times, generally administered by the school’s headmaster and council, and not by the Archbishop of Brisbane. While Mr Bernard Yorke did subsequently become involved in dealings with diocesan solicitors and insurers, he did so within the course of the duties of his official position and not at the direction of Dr Hollingworth.*

*While Dr Hollingworth did become generally aware of the allegations against Mr Lynch after Mr Lynch had taken his own life, he had no specific knowledge of any particular complaint. Furthermore, he had no reason to believe that the school’s headmaster and council were not handling those complaints in an appropriate manner.*

*Notably, no parent or student approached Dr Hollingworth to make any complaint against Mr Lynch or the handling of related matters by St Paul’s.”*

This appears to be generally correct.

4.7 The management of the claims was handled by the General Manager, Solicitors for the Diocese and for the Diocesan Insurers, and in latter times the Litigation sub-committee.

4.8 On 24 January 1997, Mr Case made a statement to staff in which, inter alia, he said:

*“I have to inform you of the death yesterday of Mr Kevin Lynch. For those new to the staff I need to add that Kevin has been the Student Counsellor at St Paul’s and has served the school well in that critical role since early in 1989.*

*I knew that Kevin had an appointment yesterday morning, but I became concerned when he had not turned up when he was expected. I expressed my concerns to Father George who is the*

*staff member who lives closest to Kevin, and he agreed to check his house on his way home. I became so concerned by the end of the afternoon that I also contacted the police. Father George arrived there shortly before the police and found that Kevin had died sometime earlier. There will be an investigation as usual in such cases.*

*I ask your concern and prayers for Father George in respect of his experiences yesterday. . . Such an event as this cannot be considered simply as an event. I spoke to many of you yesterday of the significance of the interplay of relationships in a school like St Paul's. . . That community, that commonness of purpose is now under severe strain. Some of us in the chapel here are dumbfounded; some angry; some confused; some unbelieving; all grieving. Few if any of us knowing how to control or even to structure our reactions. The impact on us will be long lasting, and it may be days or weeks or longer before we come to a full appreciation of how this news has really effected us. And if this is true of us as adults, with our maturity and experience, what will be the reaction of our present and recently past students. . . I shall try to be as frank as possible in answering any questions you may have. You will know that there may be some questions I am unable to answer satisfactorily for you. But I am not sure that "satisfaction" is a word which has much meaning as we try to come to terms with the enormity of a situation like this. . . However you and I all know enough about communities and especially school communities to realise that by then we shall have to deal with rumors and fantasies, gossip of all kind. I can only ask you to exercise as keenly as you can your professional responsibility your collegiate responsibility and your personal responsibility to a respected colleague, in an attempt to ensure that any such difficulties is handled firmly, positively and without additional or unnecessary comment which either through casualness, negligence or even deliberate misinterpretation might result in exacerbating the situation.*

*It is necessary for me to formally instruct that any and all intrusive or persistent enquiries which may foment such problems, or which involve any contact with or any approach from the media MUST be referred to me."*

4.9 Mr Case said that when he initially prepared the statement,

*"The statement mentioned suicide and there was a prayer for suicide.*

*Andrew Knox (the Chairman of the School Council) told me not to talk about suicide. I removed references to suicide from the statement I made to the staff. I altered a line from the prayer that*

*was said at the end of my statement. The prayer is number 16 on page 769 of the prayer book for Australia. The line as printed read: "We cannot know the agony which led N to take her/his own life". This was changed to read:*

*"We cannot know the agony which Kevin felt at this time.*

*We grieve that we could not meet his needs.*

*Console us in the face of death seeming to triumph, forgive us for failing Kevin in his time of need. . ."*

4.10 This statement was made by a man who believed that the charges against Lynch were baseless. He did not reveal to his staff that Lynch had been charged or that he had suicided. This was wrong. Regardless of his belief that the charges were false, the staff should have adequately informed.

4.11 Mr Andrew Knox has advised the Board that,

*"19. The Head either read over or faxed to me a copy of a statement he intended to make to staff for my comment. This probably occurred on the morning of 24 January 1997 as I expect the Head would have drafted it the previous evening. It is correct ... that I suggested that references to suicide be removed from the statement. I made this suggestion after ascertaining from the Head that there had not yet been any official confirmation of the circumstances of death.*

*20. I felt that in releasing an official statement from the School (as this would become), we should confine our comments to known facts and not speculate or jump the gun pending official confirmation of the circumstances of Lynch's death, as this would be a difficult and emotional time for Lynch's family, friends and colleagues as well as students. Official comment that subsequently proved inaccurate would only exacerbate the grief and emotions that I knew many would be feeling. In making this suggestion I believed there would be subsequent opportunities to confirm the circumstances of death to staff (and others) once an official finding was known."*

- 5.1 On 29 January 1997 there was held in the School Chapel a public funeral service which was a "Requiem Mass" with four concelebrating priests, including the school chaplain. There were three eulogists.
- 5.2 In the eulogies no reference was made to the fact that the deceased had been charged with offences against a student, nor that he had suicided. The eulogists knew both these facts. The eulogies proceeded as if nothing untoward had occurred. Whilst the eulogists may have known only of one charge, and may have been influenced by Mr Case's belief as to its validity, the many students who had been grossly exploited and inexcusably abused by Lynch, and who heard or learnt of the eulogy epitomised by the statement that Lynch was "*quite simply the most complete and skilful school counsellor that I have known in forty years of teaching*" would have been understandably devastated.
- 5.3 Wittingly or unwittingly there was concealed from the public generally, and students and parents in particular the true facts. Rightly or wrongly this was seen as a cover up.
- 5.4 Mr Knox has aptly stated,

*"The service (which remains the most well attended service that I can recall being held in the School Chapel) drew a wide range and large number of outside colleagues, friends and professional associates of Lynch. On the basis of the attendance and the eulogies made, an observer could only have concluded that Lynch was enormously well regarded professionally and by the institutions at which he had worked over the years.*

*In hindsight with the benefit of current knowledge, it is a matter of great regret to me that this service was held and conducted as it was. It can only have inadvertently caused further hurt and distress to a number of our students. However I am aware that the School Chapel also served as a local parish church and that Lynch was a regular member of this parish congregation.”*

5.5 The Board agrees that it was regrettable *“the service was held and conducted as it was”*. Without suggesting that Mr Case was responsible for the way the service was conducted, it reflected his untenable assertion to Mr Knox of *“his absolute confidence that the allegations were vindictively motivated and baseless”*. It must be added that repeated media reports that Mr Case spoke at the funeral, and told the gathering that Lynch had died of a heart attack, appear to have been false.

5.6 The School Council met on 12 February 1997. Under the item “Report of the Headmaster” there appears the following.

*“The Headmaster briefed those present regarding the circumstances associated with Mr Lynch’s death.”*

6.1 Until April 1997 the Headmaster and the School Council proceeded virtually as if nothing had happened. The charging of Lynch and his suicide did not cause as might be expected, a thorough investigation by the School authorities of all relevant facts and circumstances. There seems to have been no review of child protection policy with regard to the safety of students or the reporting of abuse. Nothing was done, and apparently nothing would have been done, had it not been for other students coming forward in April.

6.2 Mr Case has stated,

*“Nothing had happened about the Lynch matter between January 1997 and April 1997 because I did not believe he had sexually abused students”.*

6.3 The Board considers that Mr Case’s belief was unreasonable and unjustified. It was based upon the troubled school history of Student 1 who had left the school at the end of 1993. At the least, Mr Case should have refrained from forming or expressing this opinion, until he knew the facts upon which the charges were based. To assert Lynch’s innocence absent even a vestige of an investigation was misguided loyalty.

6.4 Mr Knox describes January/February/April,

*“At the time of the February Council meeting and until mid-April 1997, and (the complaints of three other students), the position was, so far as was known to me (and I believe most other Council members):*

- (a) only 1 student had made any allegations with respect to Lynch;*
- (b) the Head disbelieved the allegations entirely and had explained the basis for his belief;*
- (c) the Head had complained to me of his frustration at his inability to obtain much relevant information from the police and the specifics of the allegations and any evidence had not been shared with the School;*
- (d) the alleged perpetrator was deceased and there did not appear therefore to be any need for action to protect students from any ongoing acts;*
- (e) Student 1 had initiated no complaint with the School and no contact regarding Lynch was made by him, or on his behalf, with the School until some time after January 1997 when his father contacted an ex-Council member known to him ..... who then reported the contact to me and indicated that he had advised the father to take his concerns up with the Diocese, the Head or me as Chairman of Council. I do not recall ever being contacted by Student 1’s father (although subsequently I was contacted by solicitors acting for Student 1 some 6 or so months later). I believe that the Head*

*attempted contact with the father of Student 1 (although I am not sure of when this occurred) but was rebuffed;*

- (f) a new counsellor had been appointed and had adopted new protocols and procedures; and*
- (g) the Head and Council were inevitably alert for matters associated with Lynch and any rumours of untoward behaviour (by any staff), police charges or causes for Lynch's suicide. None came to our attention until April 1997*

*34. I do not believe there was any formal review undertaken of child protection policy, the safety of students or the reporting of abuse prior to mid-April 1997 as there was no evidence known to this point to suggest that the policies in place were not working. Until the corroborative material emerged that others may be involved, there seemed to be no need to conduct any such review. However the June 1997 Council minutes record the direction to ensure that updated policies were in place to deal with these issues.*

*35. I am unable to say what the reaction of Council members to the Head's briefing on 12 February was and whether or not any of these matters with respect to child protection policies and procedures were raised with the Head at that time as I was not present. However I note that of those recorded as present at the April meeting, 4 or 5 of the 7 Council members then had children at the School over a range of year levels. A majority of the Council as a whole was at that time comprised of parents with students then at the School. I infer from this that parental concerns were likely to have been to the fore in discussions at this meeting (as they were subsequently)."*

6.5 Obviously, Mr Knox and other Councillors were much influenced by the Headmaster's belief the complaints of Student 1 were baseless. Thus the Council's attitude appeared to be, do nothing, because nothing needed to be done.

6.6 Dr Peter Coman who was a member of the School Council advised the Board,

*"I am unaware of any meeting of the school council being convened after Mr Lynch's death on Thursday 23/1/97 and before his funeral on Wednesday 29/1/97 to enable councillors to be briefed together about the circumstances or be asked by the Headmaster for a direction on how he should proceed.*

*I understood at the time that Mr Case was in close contact with Mr Yorke the Diocesan General Manager and Mr Knox the Chairman of the school council and that he had sought their guidance in the preparation of all public statements on the matter. Considering the short time frame and the intervening Australia Day Public Holiday between the death and the funeral, this use of executive power by the Chairman and Headmaster seemed reasonable*

*I was unaware of any decision made by the school council that there should not be a public statement that Mr Lynch had been charged with criminal offences or had suicided. Such a proposition was never put to me as an individual member of the school council or as the Diocesan Education Consultant either alone or in the company of school councillors or at any meeting of school councillors that I attended.*

*When I enquired of Mr Yorke following Mr Lynch's funeral on 29/1/97 whether I could provide any further assistance, I was informed that there was no need, as Mr Case would be liaising directly with him and the Archbishop. I was made aware that the diocesan solicitors and the solicitors representing the insurers were now involved. As a consequence I had no further involvement with the matter apart from my role on St Paul's school council. In the months that followed, I was never asked for advice by the Archbishop, the General Manager, the Chairman of the school council or Mr Case, nor gave any.*

*The Board ... in outlining the complaints against Kevin Lynch refers to a letter I wrote to Mr and Mrs Case on 31/1/97 two days after Mr Lynch's funeral. At the time of writing this letter, I was focussing on the fact that I had observed at the funeral a very distraught Headmaster and his wife, and wished to give them some immediate word of comfort and support. Remembering my 1991 Toowoomba Preparatory School experience, I suspected that Mr Lynch's death was not going to be the end of the matter and that the future was uncertain because of what had happened. In the letter I reflected on human failings, and the need for forgiveness with a resolve to be more Christ-like in our own behaviour.*

*That being said, I had no influence whatsoever in the decision to hold the funeral service at the school chapel with students of the school being involved. I understood that the chapel was also Mr Lynch's parish church and that the funeral arrangements were made at the request of the Lynch family. I did attend the funeral to pay my respects to Mr Lynch whatever his failings were. He did leave a family who was confused and shocked by him taking his own life. I saw this as a private decision and found it a reconciling experience, which I shared with Mr and Mrs Case. It did not blind me to the fact that the consequences of any illegal acts that may*



*have been committed by Mr Lynch would have to be addressed sooner or later by the school and the diocese.*

*It is simply not correct to draw any conclusions from my letter about any view I may have had about the veracity of the past student who had made the complaint against Mr Lynch. At the time of writing the letter I had no knowledge whatsoever of the past student concerned or his record when at the school. This information was only revealed to me in general terms only on 12/2/97, well after writing the personal letter to Mr and Mrs Case.*

*My recollection of the council meetings that were held during the next six months i.e. school council meetings held on 12/2/97, 12/3/97, 9/4/97, 11/6/97 and 20/8/97 is that information about the complaints and the complainants were described in general terms by Mr Case to members of the school council only at the meetings of the council on 12/2/97, 11/6/97 and 20/8/97.*

*I cannot recall whether the school council at its meeting on 12/2/97 was given specific details by the Headmaster of the allegations made by the complainant or whether even the complainant's name was quoted. I can recall that the complainant was referred to as a "former student" who had a history of bullying and behavioural problems and who had left the school some years ago. The impression I got from the Headmaster's report was that Mr Lynch's death was triggered by a panic response to a "child exploitation" complaint by a former student who had a bad reputation and that the complaint may well have been made "vexatiously".*

*I cannot recall members of the school council during the 12/2/97 meeting requesting specific details about the complainant or the specific nature of the complaint that was made. Mr Case did not seek any direction from the council during this meeting.*

*The Headmaster informed members of the school council at its 12/2/97 meeting that he had reported the matter to the diocesan General Manager, and that the diocesan authorities would now be managing the matter on behalf of the school. Mr Case indicated that Mr Yorke, Mr Knox and he would monitor the matter and that he would keep councillors informed of any future developments.*

*My recollection is that the members of the school council took no further action on the matter as they accepted the Headmaster's action in referring the matter to the General Manager as being appropriate at the time.*

*While this behaviour of the school principal and school councillors may be criticised, the context in which they acted as councillors must be understood to understand why they acted the way they did. Councillors of St Paul's School did not have the authority or*

*power of company directors to initiate their own action, as would be the case if the school had been established as a company limited by guarantee or a company limited by shares.*

*Being a school owned and operated by the diocese, the legal entity responsible for the St Paul's School was the Synod of the Corporation of the Diocese of Brisbane. It was a requirement of the synod (the diocesan authority) that diocesan schools report all incidents with legal or insurance implications to the diocesan General Manager. Once reported, the incident would then become a matter for the General Manager to manage. This would generally mean informing the Archbishop and seeking advice from the diocesan solicitors and the solicitors acting for the diocesan insurers on follow-up action. Any action to be taken by the school council and school principal (the school authority) or any public announcement on the matter would first need to be authorised by the General Manager acting as the chief executive officer of the synod.*

*Being an officer of the diocese I was well aware of this protocol, as were the principals and members of the councils of all the diocesan schools. Certainly, school authorities could make their views known to the synod, but my perception based on experience was that up until mid-1997 the synod accepted the inflexible advice of the solicitors acting for the diocesan insurers in matters that had a potential for future litigation, rather than heed the advice given by those with a pastoral concern to assist those claiming to be abused.*

*In mid-1997 the synod considered a draft "Protocol for Use when Complaints of Sexual Abuse are made against Church Officials", but it wasn't until the synod negotiated new insurance arrangements allowing it more flexibility in dealing with sexual abuse complaints that the pastoral aspects of dealing with complainants were given proper attention.*

*I make these comments only to provide the Board with a perspective on why I acted as I did as a member of the council of St Paul's School during 1997 and the years that followed until I resigned from the council in 2000, and why I believe other members of the school council acted in the same way."*

*The General Manager Mr Yorke or the Headmaster Mr Case may have informed me prior to the council meeting held 11/6/97. I have no diary entry during the period 17/4/97 to 11/6/97 referring to any communication to me that three students currently attending St Paul's School had made allegations that they had been sexually abused by Kevin Lynch. I would not have noted every informal communication received in my position of Executive Director or as a member of seven diocesan school councils, but it seems odd that such a significant matter was not recorded."*

6.7 The Board had postulated that it could be inferred that had the Headmaster sought information from the police generally, and Detective Morrow in particular, this would have been forthcoming. Mr Case's solicitors strongly refuted this, stating that Mr Case did not seek information from the police, because pursuant to the understanding of police policy this would have been futile. Mr Knox in substance agrees with this, although he describes Mr Case endeavouring to obtain information from the police but being frustrated.

6.8 The Board wrote to the Queensland police division seeking a response from Detective Morrow as to what had been attributed to him by Mr Case. The latter had claimed that Mr Morrow had described the offences with which Lynch were charged as minor or not serious.

1. *The Board is required to enquire into and report to the Diocese of Brisbane as to whether the past handling of complaints of sexual abuse was fair, reasonable and appropriate.*
2. *In the case of St Paul's School Kevin John Lynch (deceased) ("Lynch") was a student counsellor and there is no doubt that he abused a large number of students whose claims have been made and settled in court proceedings, including that of Student 1.*
3. *Student 1 went to the police on 31 October 1996 and on 2 November at Boondall CIB. He was interviewed by Denis Albert Chapman DSS1861 and Glenn Raymond Hopkins DSC 4564. The transcript of that interview is in two parts (pages 1 – 20 and pages 1 – 15).*
4. *On 18 November 1996 Student 1 met with Lynch at his home and had a lengthy discussion with him. Pursuant to his cooperation with the police he was wired*

*with a listening device and all conversations were recorded. A similar conversation took place on 16 December 1996*

5. *On 22 January 1997 Detective Morrow and Sergeant Pershore went to St Paul's School, Bald Hills and the defendant was arrested, taken to the police station and charged with nine counts of sexual offences which for convenience are again set out.*
  - (i) *Unlawfully and indecently dealt with one Student 1 a child under the age of 16 years (4 counts)*
  - (ii) *Unlawfully procured one Student 1, a child under the age of sixteen years to commit an indecent act (4 counts)*
  - (iii) *Unlawfully assaulted one Student 1 and that such assault was of an aggravated nature in that the said Student 1 was a child under the age of sixteen years (1 count)*

*The headmaster of St Paul's School was Mr Gilbert Case who saw the detectives on the 22<sup>nd</sup> when they returned to the school with a search warrant to search Lynch's offices.*

*Lynch committed suicide on 23 January 1997.*

*One of the issues in the Enquiry is the conduct of Case and members of the School Council in the handling of the complaint. Case has stated that he did not believe the complainant.*

*Case's reason for believing the charges was that he was of the opinion that Student 1 was a troublesome student. Case considered the complaints were "entirely vexatious, vindictive and without foundation".*

*It has been put by way of argument that it can be inferred that had the Headmaster asked Detective Morrow for a copy of the complainant's statement it would have been provided. Can Detective Morrow state,*

- (a) *Whether this is a correct inference, at least after Lynch had suicided*
- (b) *If requested, would he have provided the Headmaster with sufficient information in respect of the complaint to enable Case to judge for*

*himself the seriousness or otherwise of the complaint.*

Case has made the following statements.

*“22 January 1997*

*Case states,*

*Some time later Detective Craig Morrow and Sergeant Pershore from Boondall presented themselves to me and handed me a search warrant. They advised that Kevin was at Boondall Police Station and that he would shortly be arrested and charged. They indicated that the charge was one of “child exploitation”; the only details they were prepared to advise were that the offence may have included fondling. ...”*

*24 January 1997*

*“When I had spoken to Detective Morrow on 24 January 1997, he said he was confident of a conviction or he wouldn’t have charged Mr Lynch. I told him that I did not believe (Student 1’s) allegations were true. That remained my view until April 1997 ... ”*

In statements recently made Case’s Solicitors have said,

*“The only advice our client received from Detective Morrow was to the effect that the charges were not of a serious sort. At no time did the police indicate to our client that the charges implied wide spread abuse. At no time was it indicated to our client that he had the right to ask for a copy of the police statement or record of interview. ...”*

*“Our client did seek Detective Morrow’s advices as to what the complaint was about. Detective Morrow advised that the charges were not serious and amounted to “fondling”. Our client was under the impression that he was not entitled to know more of the nature of the complaint because it was to be raised in court.”*

*Our client did not seek further advices from Detective Morrow because he was of the understanding that any such information would not readily be made available to him.”*

*Detective Morrow is invited to comment on those statements.*

- (a) Did Detective Morrow tell Case that,*
  - (i) he was confident of a conviction or he wouldn't have charged Mr Lynch.*
  - (ii) that the charges were not serious and amounted to “fondling”*
  - (iii) that the charges included fondling*
- (c) What was Detective Morrow's view as to whether or not the charges were serious.*

6.9 In a series of letters between the Board and the Police division, the Board was informed inter alia that police officers would not, and would not be directed to respond to the Board's enquiries.

6.10 The Board wrote on 10 March 2003, as follows,

*“The Board has your letter which in essence says that no assistance can be provided in relation to the questions which the Board sought to have answered.*

*Obviously, the Board has no statutory powers, and cannot, for instance, subpoena witnesses.*

*It relies upon the co-operation of persons who can give relevant evidence or make submissions to the Enquiry.*

*It was in that context that the Board sought to have the assistance of evidence of Detective Morrow as to what had occurred so far as he was concerned at the time of the charging of Kevin Lynch. Had there been a statutory Board of Enquiry and that issue was relevant, the Board sees great difficulty in perceiving any prohibition or inhibition about the calling of Detective Morrow to give relevant evidence.*

*The reference to the (Sex Act) does not appear to be relevant if only because the Enquiry would be concerned with events which relate to an alleged offender who had suicided.*

*All matters with respect to the preservation of the anonymity of a sexual victim could be preserved by the use of synonyms (sic) or whatever.*

*The next issue was the more general question as to whether, an organisation such as a school, and in respect of whom one of the teachers has been prosecuted and then suicided can expect co-operation from the police as to the nature and extent of the abuse alleged, so as to better equip the school to deal in the future with this situation.*

*The Board is thus left in this position that,*

- (a) The evidence that is sought to be obtained from the investigating police involved in the charging of two person with sexual abuse who each suicided, can get no where.*
- (b) The question of whether the police are entitled to, or should co-operate with a school or any other organisation in relation to the defining of the nature and extent of the abuse and prevention thereof is likewise not forthcoming.*

*To sum up, it seems that because the Board of Enquiry appointed by the Synod has no statutory powers, the police department is not prepared to co-operate in any way, but specifically it says that it will not authorise relevant officers to give evidence to the Board. What the Board would seek to ascertain is the precise statutory prohibition upon that co-operation being afforded. Put another way if the Police Service Division is saying, we would co-operate if we were subpoenaed by a validly appointed body, that will obviously be a relevant matter for the Board to take into account.*

6.11 The attention of the Board was only recently drawn to an article in the Courier Mail of 23 February 2002. Consequently the Board wrote to Assistant Commissioner Banhan 10 April 2003 as follows.

*"I refer to previous correspondence and in particular the Board's letter of 10 February 2003, and responses received which essentially conveyed that Detective Morrow would not nor would he be directed to assist the Enquiry. It was understood that the reasons for this include the belief that there was a risk of statutory contravention*

*The Board's attention has now been directed to an article in the Courier Mail of 23 February 2002 in which there is reference to the discovery under the Freedom of Information Act of the official file "of Craig Morrow then a Detective Senior Constable".*

*Later in the article there are reported statements attributed to Detective Morrow,*

*"I would not have brought those serious charges if I did not think it was a very solid case, Morrow, now the officer in charge of Sandgate Criminal investigation branch reflected this week.*

*Morrow said Headmaster Case was aware of the charges which had followed the execution of a search warrant and the confiscation of Lynch's diaries. These diaries listed appointments with hundreds of students. They would have been a good start for any genuine internal investigation into who might have been affected, yet neither the school nor Hollingworth's diocese expressed interest.*

*More than twelve months later Morrow says he contacted Case to return the diaries. Case signed the official receipt.*

*Morrow had other compelling evidence. The young victim agreed to be part of a covert operation elicited tape recorded admissions from Lynch about his sexual abuse. When Lynch was charged recalls Morrow he went into a shell. He didn't say anything he just called his lawyer.*

*The next day when Lynch did not arrive at work, Case contacted Morrow to express concern. Police went to Lynch's home where they found him dead. Afterwards, says Morrow, the school was "non responsive". He would have offered his evidence to the school had it asked.*

*But Morrow's investigation could go no where. Although he believed there were other victims, the death of the accused meant Morrow's work was finished.*

*The onus, Morrow knew was on the school to investigate further."*

*Given that Detective Morrow was substantially correctly reported, his reported remarks deal with the issues which are most important to this Enquiry. If he spoke to the press, what objection is there in him speaking to the Enquiry, in the sense of responding to the matters enquired after in the Board's letter of 10 February 2003.*



*In the light of the above, does the Police Service maintain its position previously expressed. If yes please advise forthwith. If no, please provide an answer, and Detective Morrow's responses as soon as possible. There is great urgency, because the Report is to be handed over on 22 April next."*

7.1 On 15 April the Board was contacted by the Queensland police, and it was arranged to submit to Detective Morrow, questions to which he would respond. The Board provided "reframed questions" for Detective Morrow, to which Detective Morrow replied on 16 April,

*"Q. Was he reported correctly in the article in the Courier Mail of 23 February 2002, namely in which he was reported as having said "He would have offered his evidence to the school had it asked"?"*

*A. I did speak with a person, whom I believed to be from the Courier Mail, around this time. I was questioned in relation to Kevin John Lynch. However I believe this statement to be incorrect, based on the fact that matter is one of a sexual nature and any comment about such a case would be inappropriate. I may have informed the author that other avenues were available (Freedom of Information) to obtain such information.*

*Q. Would he have provided to Mr Case or another school official, after the suicide of Lynch, the substance of the record of interview between the police and Student 1) and the interview between the student and Lynch?*

*A. No. Again I would have stated that any information in relation to this case could be obtained from Freedom of Information. I was not in position to provide such Information.*

*Q. Did Detective Morrow tell Case,*

*(i) that he was confident of a conviction because otherwise he wouldn't have charged Lynch.*

*A. I believe, I said words to that effect.*

(ii) *that the charges were not serious and amounted to "fondling".*

A. *No, the charges were serious, in fact very serious given his position at the school. Fondling is not a word used by myself and not a word commonly used in such cases.*

(iii) *that the charges included fondling.*

A. *Fondling is not a word used by police in describing the nature of an assault.*

Q. *Did Detective Morrow view the charges as serious?*

A. *Yes, very serious, as stated in 3(b)*

Q. *Did he describe the offences to Mr Case in a manner which reasonably entitled Mr Case to believe that the offences were minor.*

A. *I am unable to answer that question because I am unable to recall such a conversation.*

Q. *Had Mr Case asked Detective Morrow for his co-operation in investigating whether there were other cases of abuse in the school, would Detective Morrow, assuming no statutory prohibition, co-operated with the school in relation to such an investigation.*

A. *If Case had taken it upon himself to identify any other potential complainants, and then had I been asked to assist, I more than likely would have. My level of assistance would however had depended on the number of complaints that came forward. St Paul's School was situated in the Boondall Police Division and therefore an area in which I would be responsible however had the number of complainants been unmanageable, then the matter may have been referred to a specialist section through State Crime Operations Command, i.e. Child Abuse.*

*A further question was put to Detective Morrow –*

Q. *After Lynch had suicided had Mr Case asked Detective Morrow to give details of the abuse which the student had alleged occurred, would Detective Morrow have done so? If not why would this be so?*

A. *No I would not have provided Mr Case with the requested information as legislative restraints prevents details of the student being released. Further, before considering the release of any information in relation to alleged abuse of the student, Detective Morrow advised that he would have checked with the Detective Inspector or another appropriate authority and also advised Mr Case to make application under the provisions of the Freedom of Information Act for any information in relation to this matter.”*

7.2 The Board considers that Mr Case, and the School Council did not act fairly, reasonably and appropriately in the handling of Student 1’s complaint in the period up to April 1997. The School Council and Mr Case were in charge of the day to day operations of the School, and to effectively dismiss the fact of Student 1 having complained, the consequent charging of Lynch, and his subsequent suicide was quite unjustified.

7.3 Whilst it appears correct that it would not have been possible to obtain the substance of the case against Lynch (even after the suicide) Detective Morrow contravenes Case’s assertion he described the offences as minor. As would be expected he considered the offences very serious. Mr Case’s erroneous claim that Morrow had stated the offences were minor, reflects Case’s apparently complete faith that his long standing friend and colleague, could not have engaged in this criminal conduct. This misconception and misguided loyalty, was probably the reason Mr Case, and the School council did virtually nothing until April 1997.

## The April Complainants

8.1 In April 1997 came the complaints of Student 2, 3, and 4.

*“On Thursday 17 April 1997 Father George Henry (the school Chaplain) approached me at about 11.20 hours. He was obviously distressed. He informed me that three boys had just seen him (by appointment made some days earlier) and had made accusations of interference by the former Student Counsellor, Kevin Lynch, who had died (presumed suicide) on or about 23 January 1997.*

*Father Henry had asked the new Student Counsellor, Mrs Maree Thompson, to join him to hear the boys’ stories, and they were then asked (by Father Henry and Mrs Thompson) to commit their allegations to writing. This they did during the period approximately 11.30 to 12.45 hours on that day.*

*Their signed statements are enclosed with a copy of this memo being sent to the General Manager of the diocese of Brisbane. Mr Ron Ashton of Minter Ellison, who has continued to offer me advice on behalf of the diocese, has requested that if appropriate the general manager pass copies of these statements to him. Mr Ashton has been careful to distinguish between his responsibilities to the diocese and his responsibility to the diocesan insurers. I joined Father Henry and Mrs Thompson as the statements were being completed and took delivery of the three statements. While both Father Henry and I had been aware of a complaint and charges laid against Mr Lynch the day before his death, we had both believed that complaint and those charges to be entirely vexatious, vindictive and without foundation, until confronted with the stories the three boys told.*

*They commented that they had begun to compare notes earlier this year and became disturbed by their discoveries. During term one 1997, one of them had then made an anonymous phone call to a counsellor, selected from the phone book, and enquired whether such techniques as they claimed to have experienced were usual counselling techniques. On receiving advice that this was not the case, the boys had made the appointment to see Father Henry. (The boys were then identified).”*

8.2 The statement proceeds:

*“After perusing the statements I immediately made contact with the parents and spoke in turn to (the parents of each of them).*

*I explained the nature of the allegations the boys had made. (One parent requested to read his son's statements; the others did not). Mrs Thompson and Father Henry were present at these interviews and Mrs Thompson explained to the parents the counselling support she would offer to the three boys over the coming weeks.*

*Asked if they thought anyone else may have had a similar experience (one student indicated no), (the other two) separately nominated certain possibilities and one of those also nominated a former student. On Friday morning (one set of parents) called to see me to thank me for the way in which the school had handled the issue. I have had no other contact at the time of writing from (the other parents).*

*I also arranged to meet, again with Mrs Thompson and Father Henry, the mothers of the other two current students named . . .”*

- 8.3 In their statements two of the students asserted that they had reported Lynch's conduct to the headmaster. In a statement Mr Case made in August 2002 he stated, inter alia:

*“In 1996 Lynch sent students (student) for discipline. He told me he was sending them down because they knocked his furniture over and pinned him in his chair. I interviewed (the students) who complained that they were angry with Lynch because he had exchanged their personal details with other students. (The students) in particular were known to hang around Lynch's office and do minor clerical work which he found for them to do. This would include some photo copying, or tidying career material on his library shelves. I therefore interpreted what had happened as a prank arising from over familiarity with a member of staff, which had over stepped the bounds.*

*As I recall it, I punished them because of the serious nature of the matter. Pinning a teacher in his chair is an assault which has to be treated seriously. Their punishment was that they were not to go back to Lynch's office without seeing the Chaplain, George Henry, who would decide if it was appropriate for them to see Lynch again. It seemed to me that they both regarded being banned from his room (their haunt) as it were, as a punishment. I believe they both in time sought and gained permission to resume visiting his office.*

*I do not have any clear recollection, but it is possible that I rang Lynch while (students) were in my room. I may have put to him the accusation that he had been exchanging personal details. He would have denied it.*

*I had no recollection of anyone coming to see me the day after my interview with (the students). If someone had told me about sexual abuse I would have acted. I would also remember having been told about it.*

*I suspect I got cross with (the students) because the de facto situation was that a bit of boisterous by-play had ended up being an assault on a teacher. I don't think I suspected there was more to it than they were saying. (One student) was known to be a bit erratic. I thought that Lynch was thoroughly trustworthy. (One student's) apparent friendship with Lynch was attributed by me to Lynch having been instrumental in being moved from his custodial mother to live with his father. The allegation had been that his step father had been abusing him. I do not know the precise nature of that alleged abuse. .*

*I do not know of any other complaints made about Lynch where there was any suggestion of anything like sexual abuse. I recall that when Detective Morrow spoke to me about Lynch I thought it was totally new to me and not something I had ever heard about Lynch before."*

#### 8.4 Mr Case states,

*"When I had spoken to Detective Morrow on 24 January 1997, he said he was confident of a conviction or he wouldn't have charged Mr Lynch. I told him that I did not believe (Student 1's) allegations were true. That remained my view until April 1997. In February/March 1997 a couple of people mentioned to me that there were rumours going around about Lynch, but I heard nothing definite. Once the three boys came forward in April, I realised we had all been duped.*

*After (the three students) had made their complaint I was very surprised. I thought to myself "you've been kidding yourself Case".."*

#### 9.1 The circumstances in which Student 2 and the others came to make the statements following speaking to the Chaplain is described in a report of Dr Joan Lawrence made on 3 July 2002.

Dr Lawrence there describes the position,

*"In 1997, when they returned at the beginning of the year, knew of Lynch's death and had been approached by Student 2 who*

*told them that the Lifeline counsellor had said it was sexual assault, they all consulted the Chaplain, Father George. Father George is reported to have rung the new school counsellor who had already started. She was said to have considerable experience with victims of sexual abuse. The three of them were seen by the new school counsellor and all three were asked to put in writing to the Head Master the details of the abuse that they had suffered. The Head Master then rang their parents to come to the school and they were interviewed. Student 2 says that Case was "really nice to my father" and went on to say that it was the first time that Case had ever taken them seriously. . . "*

9.2 Student 2's consequent written statement read,

*"To whom it may concern*

*This note is to state the illegal practices of Kevin Lynch operating at St Paul's School.*

*It all started in Grade 7 when I had a few problems with my step-dad and I was told to see Mr Lynch. Mr Lynch said that I was extremely stressed and that he had a relaxation tape that he would use on me. He said that he would undo my shirt. He asked if I felt safe and I answered yes. The undoing of my shirt was so that he could get to my shoulder muscles. However the next time it went further. He opened my buckle on my pants and undid my zip. Once again he said "Do you feel safe?" I answered No! But he said there was no need to be afraid as he wouldn't hurt me. This time he touched my penis and told me suck my thumb. He said "When you suck your thumb do you get a slight tingle in your penis"?*

*This continued for about six months. By this stage I had all the buttons on my shirt undone and my pants down around my ankles.*

*The next visit I had was different. Mr Lynch told me I was so stressed that he would hypnotise me. I agreed and sat in the chair. This time Mr Lynch got down to the pelvic area. He asked me to masturbate. This would be the first time so he told me how. He asked me did I want to? I said No. Then he went back to just playing with my penis during the relaxation time. I thought all this was supposed to happen until found out a few weeks ago that it was a case of sexual abuse.*

*Conditions*

*I must be consulted before any action or any other person is told of the incident. Under no circumstances will my parents be told."*

9.3 In May 1998 Student 2 wrote to Bishop Noble. The letter typifies the way in which Lynch abused students, similarly, do the statements of the students set out in Schedule 1. Whilst each case is different, the pervasive theme is Lynch's manipulative exploitation of students for his sexual gratification. Student 2 had a longer period of contact and negotiation with School Authorities than did other students.

*"During the years of 1994 to 1996 I was sexually assaulted by the school counsellor. I only last year fully discussed the assault situation with the school but had mentioned other cases in 1995. I felt the Anglican Church should be notified about the way in which the school has handled the issue.*

*After discussing the sexual assault with the school principal (Gilbert A. Case) I am unsatisfied with the school's overall approach to the matter as I felt the matter could have been dealt with and stopped when I first mentioned a case to the principal in 1995 instead of being told that I spoke of nonsense!*

*Although the school has given me in-and-out-of-school counselling, I still have not received an apology of any description from the principal or the school. To me it seems as if the school wants to sweep this under the carpet and forget that it ever happened!*

*I would however like the school to take the matter seriously, which does not seem to be happening.*

*To prove to me that they do care I would like the following to occur: I would like to receive an apology from the Principal and the School; I would like an educational program to be taught to the primary students, letting them know to be aware of what can happen! I would like the teachers to be trained on how to deal with sexual abuse so that if a student approaches them, they will know what to do.*

*I DO NOT WANT ANY STUDENT AT ST PAUL'S SCHOOL TO BE TREATED IN THE SAME MANNER THAT I WAS.*

*The above points are something that I personally need to enable me to finish my healing process so that I can try and forget about the incident and resume a normal lifestyle. "*



*The following pages attached to this letter explain the whole situation ... I must also notify you that I know of at least three other victims."*

- 10.1 In the statement Student 2 describes how he arranged an appointment with the student counsellor because of family troubles, particularly with his step dad. He wrote of how Lynch had introduced the relaxation tape and then engaged in significant abuse and hypnosis and masturbation. The statement continues,

*"Around May/June of 1995 the tape was still in use. However my friend came up to me and questioned me about my family problems, he said that Mr Lynch had told him so he could help me. I didn't tell my friend straight away but Mr Lynch was telling me about my friend's problems, apparently he had a fixation and he wouldn't listen to Mr Lynch but would listen to me.*

*At my next counselling sessions Mr Lynch showed me some black and white pictures of all different size of boys' penises, he asked me to point me to the one that was about my size, I did. He then told me about two other peoples' penises, my friends and someone I hardly knew by the name of (name deleted). He told me how mature these people were. After this session I went and found my friend. We had a serious talk about everything. And we went to question Mr Lynch. He called us both liars, my friend tipped a desk on Mr Lynch due to his anger.*

*After this both my friend and I went to Mr Case (principal) and told him that Mr Lynch was spreading our personal information. The Head Master's response to this was, "it was nonsense". He called Lynch out, and made my friend and I look like fools, Mr Lynch denied all of what we had said. He was believed. He also said that my friend tipped a desk on him, so we both got banned from his office. After this we felt we could do nothing about the matter as the top person in the school thought we were joking.*

*However my friend tells me that the next day he went and saw Case again and notified him about the sexual assault. He told me that he was treated in the same way, after this we said nothing, we thought that if Case wouldn't believe us who would. . .*

*The last time I saw Mr Lynch was on the last day of term 96, he gave me the relaxation tape and a copy, I never saw him again as he killed himself just before school resumed in 97.*

*It was only then that my friend, and I had a serious talk about the whole issue, as we had all matured slightly we started to feel uneasy of what Mr Lynch had done to us. My friend rang an outside counsellor and found out what Mr Lynch had done to us was wrong. We found this time very difficult. We thought of notifying the principal, but we couldn't, as we thought that we would once again be called liars.*

*After about three to five weeks we felt we had to tell someone, we told Father George, we trusted him.*

*Father George explained that he couldn't help, he knew that we couldn't talk to Mr Case (principal) so he arranged for us to speak with the new student counsellor. We told her what we wanted but not all. After that we had to write a letter to the principal explaining what had happened to us. We gave it to him. He told our parents.*

*At this stage the school offered in-school counselling by the new student counsellor, who had apparently dealt with many sexual assault cases before. Also during this time my father noticed that I was unhappy, he told Mr Case that I was unhappy with his actions. The next day I was called to Mr Case's office, his first words in the most harsh way were "What's wrong with me", I answered, "Pardon Sir". He repeated himself. This was something that really hurt me, as at this time I needed support, not to be told off again. . . . However Bishop Noble, I can't deal with the issue on my own anymore. I have almost finished my healing process and now need a few things from the school. I had many questions for the school at the beginning of 1997. Very few of these questions were answered. Out of all these I need most, an apology from the school and the Head Master in writing.*

*You might think that an apology is a minor thing. After all it's not too hard to say sorry. But to me and the other victims this would be a good start. It means so much to us, as we feel that the school still thinks that this is some type of joke. By writing an apology, it shows us they have expepted (sic) that they made a mistake and that this . . . ."*

- 10.2 That letter was accompanied by a Report from Mrs Coral Palmer, a psychologist who had been treating Student 2.
- 10.3 This is a report from a person familiar with the problems of sexual abuse, generally, and because of her consultations with Student 2 the particular

problems at St Paul's. It is appreciated that not all will agree with the facts stated and the opinions expressed by Ms Palmer but the Board considers that she paints a substantially accurate picture of the plight of Student 2, and thus of other students. Her criticisms appear reasonable and justified.

*"I am writing this letter to you in your official capacity, as contact person for allegations of Sexual Misconduct within the Anglican Church, on behalf of my client Student 2 and his parents engaged my services with school consent to undergo counselling re sex abuse/assault he experienced between 1994 and November 1996 at the hands of the then School Counsellor, Kevin Lynch, now deceased. Having gained a reasonable history of events from Student 2 and discussed his situation with Mrs Thompson who succeeded Mr Lynch in the role of counsellor, there are significant aspects of the situation that I consider a major cause for concern.*

*I am aware that response to these issues within the Church generally is still very much a pioneering process and that your Protocol was only being formulated and adopted during the years this abuse occurred. However there appears to have been no attempt since to apply the protocol to this situation, which Mrs Thompson told me she had requested happen. For the sake of the Church and the innocent children involved, I considered it important that appropriate persons within the Church be made aware of this family's experience and concerns. From the evidence I have heard, I would consider legal action could have been taken by the family. However as members of the church they are reluctant to do this, preferring this approach. ... I have enclosed a copy of my Curriculum Vitae so that you are aware of my past experience in the church and this area of sexual abuse and trauma. You will note that I attended the first conference on Sexual Abuse by Professionals including Clergy, conducted in Sydney in 1995. From the evidence that was presented there and my own experience, it has been evident that significant failures have occurred in the way this situation has been responded to. These events could significantly damage the Church if they are not dealt with appropriately. My concerns fall in 3 main areas.*

### **1. The nature of the response**

*From the response that Student 2 received within the school it appears that the significance and serious nature of Mr Lynch's mode of operation has not been fully appreciated.*

*Having listened with Student 2 to the relaxation tape which played an integral role in the sessions, (still a difficult experience for him to go through), it is clearly evident that his perpetrator was:*

- *A highly skilled operator who used his professional skills and knowledge including hypnosis in a way that exploited his young victims' lack of knowledge, placing them completely in his power.*
- *Conducted the abuse by means of a carefully planned, premeditated process which maximised their exposure to him, for increasing periods of time.*
- *Made use of strategies that could leave his victims vulnerable well into the future, eg.*
  - *An as yet unidentified hypnotic trigger that immobilises the victims;*
  - *Use of a relaxation tape with a female voice to accompany his sexual activity which had implications for their future marital relationships/sexual orientation;*
  - *Gave them instructions and materials to encourage sexual activity with peers.*

*From the evidence that is known, it is highly likely that there are as yet other unidentified victims at St Paul's and among it's past pupils. Student 2 also has expressed concern that pupils at other schools where Mr Lynch was employed have also been abused. The number is likely to be greater than what is currently known. Research evidence suggests that victims identified early in an investigation are often just the tip of an iceberg. There can be hundreds. My own concern is that if these victims are not identified and assisted through a recovery process, the likelihood that they in turn become perpetrators increases.*

## **2. The role of Mr Case, Principal in the School Response**

*Student 2 and his friend first reported their concerns regarding lack of confidentiality and disclosure of personal details (penis size) to Mr Case in mid 1995. His statement gives his own account of this event and the outcome. Student 2 has had concerns about the headmaster's involvement and handling of the situation from this point on because of an understanding gained at school that Mr Case was a close friend of Mr Lynch having been at school together. If this information is correct then his involvement in managing the school process has been a conflict of interest from the beginning.*

*Of particular concern to Student 2 and his family have been that:*

- *The parents were not informed of these initial allegations.*

- *These revelations didn't lead to at least some enquiry as to how Mr Lynch could have knowledge of those personal details, considering his role in the school.*
- *The boys didn't know that it wasn't standard practice to undress for the therapist.*
- *This failure to respond resulted in further sessions of abuse and ultimately denied Student 2 (of) the opportunity to see his perpetrator brought to justice and to receive justice himself.*
- *Since the allegations have been revealed in detail, Student 2 has felt a level of animosity against him*

...

### **3. Apparent failure of the school system**

*From Student 2's evidence, it is clear that his abuse occurred regularly, often with long absence from classes, for several years without detection. Concerns that were raised in reports by his teachers about frequent absences from class and failing grades, did not appear to lead to any suspicion or internal investigation into his need for ongoing counselling. The appearance is that Mr Lynch had no one to whom he was accountable for his practices and was able to conduct his work with semi-naked boys lying exposed for long periods without fear of interruption. Since my own involvement, I have been concerned about an apparent lack of understanding of the ongoing impact this abuse is likely to have on Student 2 and a lack of sensitivity, that resulted in him and his peers being counselled by the new counsellor in the very room where the abuse had originally occurred. In my discussions with Mrs Thompson and communication from Mr Case I have gained a strong impression that Student 2 is considered to be malingering and a trouble maker. However from my own experience in the field, it is evident that Student 2 is still suffering symptoms of Post Traumatic Stress. He is frequently triggered in the school environment by reminders of the abuser and the lack of an appropriate resolution from a school perspective."*

10.4 Mr Yorke on 2 June 1998 forwarded the letter and statement from Student 2, and the report of Coral Palmer to Flower & Hart, the solicitors for the

Diocese, who in turn forwarded them to Minter Ellison, the solicitors for the Insurers.

10.5 Mr Yorke then wrote to Student 2,

*“Bishop Noble has passed on to me your letter of 28 May 1998 and the supporting letter from Ms Palmer. I wish to respond to the issues raised in your letter. I shall also write separately to Ms Palmer.*

*The Anglican Church strives to act in accordance with the demands of Christ – to teach his doctrine and follow on and uphold his discipline. The Anglican schools, of which St Paul’s is one, conduct themselves with the same aims.*

*Within the community of the church, there is occasionally a person who betrays the trust and confidence placed in him or her. When this happens, the whole church is hurt to one extent or another. We try as hard as we can to ensure that this does not happen but occasionally it does.*

*We recognise the hurt that you have suffered through your dealings with Mr Lynch and, as a member of our community, we are concerned to ensure your welfare. We are very pleased that your sessions with Ms Palmer have been constructive.*

*The events that have occurred in relation to Mr Lynch have been a dreadful disappointment to everybody concerned. We all placed our trust and confidence in him and it seems that he betrayed it. However, while recognising the pain that has been caused, it is most important that the experience be used by our community to improve systems for preventing this sort of thing occurring again.*

*The Anglican’s School’s Commission is considering many aspects of the administration in schools that might be changed to prevent such things occurring and to deal with the hurt that it caused if they do occur, despite all proper attempts to prevent them. We are grateful for the suggestions you have made for improving the educational program.*

*We are very sorry that you have had unpleasant experiences with Mr Lynch. Our entire community including Bishop Noble and Mr Case share the sorrow of the events that have occurred. We hope that you are able to complete your healing and proceed through your life positively without allowing your acquaintance with Mr Lynch to impede your progress.”*

10.6 That letter and the letter to Mrs Palmer referred to hereunder contained a genuine apology. It did so, without admitting that the Diocese had a legal liability arising from Lynch's conduct. In short the letter conveyed what ought to have been conveyed at the outset, namely, regardless of whether or not the Diocese is liable for the acts of Lynch, those acts are deplored, and the Diocese apologises to the victims for the fact that they have occurred. Thus this letter exemplifies the ability of the Diocese to apologise, whilst leaving aside the issue of whether the Diocese has a liability for the acts of the offender. A criticism which might be made is that the apology should have been more strongly expressed. A victim of sexual abuse justly wants an acknowledgement of the abuse, the assurance that he/she was not to blame, and that the School (in this case) deplores which has occurred, and apologises.

10.7 Mr Yorke wrote to Ms Palmer,

*"Bishop Noble has passed on to me your letter to him about Student 2. First let me say that the diocese is very grateful to you for the positive counselling that you have been able to provide to Student 2. Let me say also that we are all deeply concerned about events that occurred with Mr Lynch. You must accept that the matter is being treated with the greatest seriousness.*

*I have written to Student 2 expressing the sorrow that we feel about the events that have occurred. It is our attempt to apologise for any breach of trust of confidence by Mr Lynch.*

*The protocol for dealing with complaints of sexual abuse against church officials was developed after careful consideration and is now applicable within the diocese. As you will appreciate, the matters dealt with by the protocol are very broad and we are yet to see whether the protocols provide satisfactory solutions to events that occur. The protocol is primarily concerned with resolving disputes between a Complainant and a Respondent. Where the Respondent is deceased, the protocol has little if any application.*

*One aspect of the protocol which we feel will be important is the support provided to the Complainant (and to the Respondent) in each case as the issues are dealt with. We feel that excellent support has been provided in this case to Student 2 by Mrs Thompson and by you.*

*The school has taken positive action to identify people who might have been affected by Mr Lynch. The school will continue to do so and will respond promptly to any new concerns that arise.*

*Mr Case was a friend of Mr Lynch. He had known him professionally for twenty three years. They often worshipped at the same Chapel at St Paul's and Mr Lynch was often allowed to look after Mr Case's own children. It is true to say that Mr Lynch had the trust and confidence in Mr Case built up over a long period during which there were no complaints about him but many compliments.*

*Mr Case has been hurt by the events that have occurred. He feels the pain and betrayal by Mr Lynch and he feels sorry for those affected by Mr Lynch's behaviour.*

*The need for confidentiality raised in your letter is also a continuing difficulty of dealing with events in schools. Student 2's confidences need to be observed as do the confidences of anybody else who might have been affected, however remotely. It may sometimes appear to people who are not directly involved in these issues that because there is silence, there is also an uncaring attitude by the church. Nothing could be further than the truth but the need to respect the confidences of students is of primary importance. As I have mentioned in my letter to Student 2, we are using the experiences associated with Mr Lynch to devise systems that will better protect us from matters of this kind in the future. In that sense the events that have occurred can be looked on as of positive benefit – improving the welfare of members of our school communities throughout the diocese.*

*Thank you for raising the issues with us and providing your careful advice to Student 2. I will be happy to discuss these issues with you if you should wish to do so."*

- 10.8 Notwithstanding the optimism in the above letters that resolution would be achieved, negotiations and discussions with respect to settlement of the potential claim by Student 2 took place with Student 2 and his father over the following years. Student 2 did not turn 18 until 28 October 2002.



11.1 In mid 2000, there was a tremendous amount of publicity as to the issue of sexual abuse at St Paul's, Toowoomba, and the Brisbane Grammar School. In respect of St Paul's and Grammar it was of course Lynch who was the perpetrator, and with respect to Toowoomba, Guy. It may be said that a deal of this publicity was incorrect or exaggerated, but nonetheless, the essential facts upon which it revolved were true, namely that the resident House Master of Toowoomba and the School Counsellor of St Paul's had engaged in gross sexual abuse of children in their care.

11.2 Sensationalism sells papers and has viewers watch, and listeners listen. Whilst there were supervening events (a widely publicised shooting) which were linked to Lynch's conduct at the Grammar School, which would probably have produced wide publicity anyway, a theme of the reports was that a scandal had been uncovered, therefore there had been a "cover up". The Board does not suggest there was any intent to cover up, but because of the absence of a public statement when the abuse was first discovered, this was the impression created. Had a measured public statement been made when Lynch's infamous conduct was first discovered to the effect,

- I. There had been sexual abuse by a teacher of a student or students.
- II. The school authorities were aghast and angered at this discovery.
- III. The teacher had been charged by the police and subsequently suicided.
- IV. A thorough investigation is being made to ensure the full extent of what has occurred is known.
- V. The school apologises to the students who have been the victims of this unsuspected evil conduct for the hurt they have suffered, and they can be assured the school will give them every support and assistance.

This would have precluded the later claims of “cover up”.

11.3 In the Minutes of the school council meeting of 14 June 2000 the following appears:

*“The matter of the recent press coverage and the various items of correspondence in relation to the late Mr Lynch was discussed in committee. Particular reference was made to a fax received by the Archbishop, containing details of an article proposed for publication. During the meeting further advice was received from the Solicitors for the diocesan insurers.*

*The Chairman indicated that he, the Deputy Chair and the Head Master had attended meetings of the various support groups of the school and would continue to do so. The purpose of attending the meetings was to answer any questions that may arise in regard to the matters raised in the press.*

*Each parent meeting has been advised of processes that have been adopted since the school and the diocese became aware of the matter in January 1997.*

*The Chairman indicated that it was time to accelerate a response to the newspaper articles. However, it was necessary for the school to obtain consent from the diocese for public statements.*

*It was agreed that the school should acknowledge that the events were tragic and that the school offered help to those who wished to come forward for assistance. Furthermore that the administration had warned that there could be some students at risk and could need help.*

*The meeting expressed the view that the current position of not responding to the statements in the press (while being a legal position) did not show the compassionate side of the school or what the school was currently doing for those students and families involved.*

*Members of council considered the draft letter that was proposed to be forwarded to past students of the school.*

*It was agreed that amendments be made to the letter and that the Chairman, Deputy Chair and Head Master consult on the matter so that the communication could be distributed without delay.*

*It was further agreed that the Chairman and Head Master meet with the Archbishop, the General Manager of the diocese and the insurers at the first opportunity in an endeavour to develop public response to the media statements taking into consideration the needs of the school community and what the school had done and was doing to address the matter. ”*

11.4 In a Head Master's report to the council, he stated, inter alia:

*“A principal concern when we meet must be the publicity now given to the alleged activities of Mr Kevin Lynch while he was at St Paul's and earlier. The newspaper reports will have been read by all members of council, the main stories are in a separate section of newspaper cuttings enclosed with this Report.*

*I mentioned at our last meeting that there was a likelihood of publicity around this time, and alerted members of council to the probability a week before it actually occurred because of contact from the press. I shall have more to say when we meet not least about the vigour of the press in pursuing this issue, and their handling of past parents, present parents, staff – anyone from whom they thought they could extract a story. . .*

*The Chairman of the council, the Deputy Chairman and I have been visiting parents groups whenever they have met and have been able to speak of the problems of dealing with the media and of the inaccuracies in some of their reporting.*

*While we had some indications of the allegations from our experiences of the last three years, the scope of the accusations went beyond any expectations. At the General Manager's suggestion, 1-800 in number for the reporting of abuse or harassment to the diocese was included in our letters to parents, which went also to members of council. That system seems not to have been prepared for the volume or the nature of calls on this occasion, and I have suggested some alteration to it against any future situation of this kind.*

*The issue has directed attention again to the balance of responsibility between the school and the central diocesan*

*authority. Our earlier submission to the Appleby committee is not irrelevant here. There are both advantages and disadvantages in independence. While we have been less free to make an immediate response to some issues than say Brisbane Grammar School, we have also had some protection because of the existence of the diocesan and (inaudible) areas which the school council would otherwise have had to negotiate for itself.”*

*The circular letter sent to past students in June 2000 stated:*

*“We are writing to the past students of St Paul’s School because of matters which have been given publicity in the Brisbane press over the last two weeks regarding allegations of improper behaviour directed against a former staff member of St Paul’s Mr Kevin Lynch. Mr Lynch was employed as the counsellor at the school from early 1989 until his death in January 1997.*

*Although the school received no information or complaint of any improper behaviour by Mr Lynch until his death, it is true that since his death the school has received information alleging improper behaviour by him during his employment. It is also true that since then the school, through the Anglican diocese of Brisbane, has been working with students and parents who have approached us or the diocese about these issues.*

*As a past student, you will know that St Paul’s has always had a paramount concern for the safety and security of its students, and for this reason the matters reported to the school or the diocese are being fully addressed directly with those affected. It is a matter of serious concern and of great regret to us that these issues were not identified at the time.*

*It may be that you still have concerns regarding this situation. In this case you should report them immediately to the Head Master or some other senior staff member, the Chairman of the St Paul’s school council, or the Anglican diocese of Brisbane. The diocese has a special number for use in cases of alleged sexual harassment or abuse 1800 25202. Any reported concerns will be considered and responded to promptly and on a confidential basis.*

*The continuing media reports have been disturbing to the whole school community, as the matters which have been reported are themselves disturbing and tragic. Inaccuracies in the reporting and some attempts at sensationalism by the media have not assisted those who may most need help and sensitivity.*

*We have received many messages of support from throughout the school family and we are reassured by the obvious concern its members have for each other regardless of when they attended our school.*

*You will know from many sources, including the latest St Paul's Gazette, that there are many positive things always happening at St Paul's. These cannot occur without the ongoing care and overriding concern of our staff at all levels for our students and their welfare. Please continue to support them and our school, however you can."*

- 11.5 That letter is also a useful example of what could have been written much earlier. For instance, the letter does not admit liability, and it could easily be expanded to include a full and unconditional apology to those students who had been abused.
- 11.6 Mrs Jacqui Kearney who was then the Chair of CCSA describes the publicity in mid 2000 as producing a great number of phone calls to an emergency toll number. Many of these calls were abusive and anonymous and ranged over a series of accusations and complaints against not only Lynch, but also about other persons in the diocese. In the main they remained anonymous, offered no evidence and spoke in broad and abusive tones.
- 11.7 The above is not a criticism of the press. It is their right and duty to report, and when in such a vital area of child sexual abuse, there is perceived any mishandling, procrastination or prevarication, it will be given maximum prominence. The Board does not suggest a prior public statement would have prevented publicity being given to the claims. But to be able to point out that as soon as the abuse was discovered, it was disclosed, remedial steps taken, and apologies made, prevents the accusation of a cover up.

11.8 Some efforts were made by the school after April 1997 to discover other students who had been abused but as Mr Case had stated,

*“With the benefit of hindsight the efforts which were made to identify other victims were both inefficient and lacked persistence in terms of what is now alleged about the extent of Lynch’s behaviour. However, the efforts were abandoned primarily because they were not proving successful in identifying any further victims.”*

11.9 Further, it appears there was legal advice that it was unwise to seek to discover victims. All these problems could have been overcome by a public statement of the sort referred in para 11.2. Not only does such a statement have the effect of informing victims of their entitlements, but it demonstrates that the school has taken appropriate and reasonable action to deal with the ongoing situation. If the previous conduct of the School Authorities is later claimed in court proceedings as negligent, the making of public statement acknowledging the facts of the abuse having been perpetrated by a teacher, will not prejudice a defence denying negligence.

11.10 It is difficult if not impossible to justify the absence of a carefully drawn public statement. Parents of children at the school particularly should be properly informed of matters, which may vitally affect their children. The absence of a prompt public statement, leaves the field free for speculation, rumour, and innuendo, and the damning accusation of “cover up”.

12.1 The Chairman of the School Council speaks of the frustration the Council felt at their exclusion from dealing with the Lynch complaints, and the failure to make a public statement.

- *In about April 1997 (ie that is after this corroborative material emerged) the Diocese (I assume through the General Manager) instructed the Head (and through him, me) that any matter associated with Lynch and allegations of the sort made by Student 1 and the 3 boys in April 1997 should be referred on to the Diocese and that "they would deal with it". As evidenced by Mr Case's statement, ... in April 1997 both the General Manager and solicitors on behalf of both the Diocese and insurers were already involved.*
- *Once the School's owner indicated that it was taking over responsibility for the Lynch matter and the handling of complaints in about April 1997, I took this to mean that the Council's role was from then limited to acting as directed in relation to this matter and ensuring that all relevant information was passed back to the Diocese promptly via the General Manager.*
- *I did not assume however that there was no ongoing role for the Council in dealing with our School community on this issue, but rather that our role from April 1997 on was constrained by what the Diocese and its insurers (and more accurately their lawyers) would authorise and that any action we wanted to undertake would need prior clearance from the Diocese and its insurers.*
- *It also became apparent from this time on that the Council ceased to be part of the ongoing process of dealing with the Lynch issues (not perhaps intentionally, but as the practical outcome) in that information ceased to flow to Council (and the Head) as the Diocese and the complainants dealt directly with each other without reference to the School for the most part, and the information which did get to Council and the Head was piecemeal and often out of date. Bits of information about Lynch related topics would often be communicated to me or the Head (and then by him to me) in conversation with the General Manager about other matters entirely. As detailed below this created significant frustration within Council.*
- *... once this corroborating material was received in April 1997 investigations of the allegations were initiated by the Head and counselling support was offered. These actions were cleared with the Diocese. ... attempts were made by the Head to ascertain*

*whether anyone else beyond (by this stage) the 4 students could have been involved.*

- *... there was no suggestion that Lynch was a serial sexual abuser until April 1997 at the earliest and investigations were made then by the Head to identify those that may have been impacted by this abuse. As part of that investigation process it was reported to the Council by the Head that some of those affected had stipulated that they did not want any publicity and the Head communicated his own belief that any publicity would be likely to be very detrimental to a few of those involved – at least until they had an opportunity to come to grips with the situation through counselling. Further, the majority of Council was then comprised of parents of students at the School. To my recollection, while all Council members thought it desirable to inform the community, no Council member regarded it as imperative that this occur regardless of the other factors that were involved and of the potential detriment to students affected.”*

12.2 Mr Knox states that the Council was frustrated at being effectively

excluded from the process of dealing with the claims, and of not being kept informed by management of what was happening with the Lynch matter.

Because of this, and also because of the stated desires of some students to keep matters confidential, it was decided not to make any public statement.

Mr Knox continues the frustration.

- *The tenor of the discussions at these meetings was that Council members were anxious to make a public statement just as soon as we felt confident that the benefits of doing so would be greater than any potential downside for students known to have been affected.*
- *I acknowledge that the minutes of the meetings do not record the detail of these debates and I take responsibility for that as Chairman in that I directed the minutes secretary to be very circumspect with what was recorded as having been said on this topic. I did this because it was apparent that we were debating this issue in a factual vacuum as the Diocese was not keeping the School Council or the Head in the loop with respect to how matters were unfolding. Most of our discussions therefore took place on the basis of only a partial and disjointed knowledge of the state of affairs, and without any understanding of the Diocese’s or the complainants’ current positions. I was concerned that this would inevitably lead to inaccuracies, speculations and ill-founded opinions being recorded as “fact” and Council arriving at, and recording, positions on false, out of date or incomplete bases.*



- *The School Council felt enormously frustrated by its exclusion (for all practical purposes) from the process of dealing with the Lynch matters from April 1997 onwards, to the point where a number of members of Council expressed anger that we were in the position where our students had been affected by Lynch's conduct and we were unable to be publicly or privately responsive to our School community. Council's hands seemed to be tied in terms of our ability to respond to the affected students while the Diocese and its insurers dealt with the matter.*
- *The School Council's strong preference after April 1997 was to have been able to make some public statement to the effect that there had been a number of complaints about Lynch's conduct but Council felt unable to do so on the basis of the request for confidentiality by some of the affected students and the Diocese having taken over handling of the matter to the point where the Council was uninformed as to what had been discovered and what was being done about it."*

## **The Settlement of Claims**

13.1 Generally, it appears that negotiations and consequent settlements were adequately and properly conducted on behalf of the Diocese. In saying this the Board recognises that the process of negotiating and settling claims, either informally, or by the issue of court proceedings was for many claimants a stressful and painful experience. Any personal litigation is usually stressful, but this is compounded when it involves sexual abuse. The necessity for claimants to make statements to their lawyers, medical advisers and others, detailing the abuse suffered, required the claimant to live again the harrowing episodes of the protracted sexual abuse in which Lynch methodically engaged. The very decision to make a claim is fraught with worry and concern. Victims of sexual abuse, in many instances, keep their experiences secret, and do not want to speak about it. There is often a particular reluctance to reveal or discuss the abuse with parents and loved ones. The ineradicable fact of the sexual abuse having occurred, ensures that no matter how considerately or efficiently the process of resolution of a claim proceeds, it

typically imposes great stress and strain on the victim. The Board has no doubt that notwithstanding settlement of claims, many victims remain distressed, angered, and frustrated because of what they have suffered. There should be and remain for those victims a reservoir of sympathy, understanding and assistance.

13.2 Whilst the great bulk of the claims were settled in 2002, the claim of Student 1 had been settled in April 1998. There was considerable publicity to the effect this settlement had occurred in effective secrecy, and was a cover up. The basis for this was the fact that there was a confidentiality clause in the Deed of Release. Such clauses were common. But the fact that Student 1 had been abused by Lynch, and that he had sued the Diocese and his claim had been settled was not required to be kept confidential. The confidentiality was as to the terms of the settlement. Thus there was nothing to prevent Student 1, his parents or anyone else, publicising the fact that he had been abused, had made a claim and that the claim had been settled. Of course, in the great majority of cases, the last thing a victim of sexual abuse wants is for the world to know that this is so. Victims are often embarrassed, ashamed, and even feel guilty (which of course they should not) by what has occurred. In particular, many students do not wish for peers to know because of fears that they will be labelled as homosexuals or stupid for not resisting and reporting the offence.

13.3 The manner in which the claims were resolved is well described in a Memorandum by Mr Peter Dunning of Counsel who was a member of the Litigation sub-committee. Relevant extracts from “Managing Litigation and/or

resolution of claims of Sexual Abuse made against an Anglican Diocese – the Brisbane Experience” are set out. Names have been altered to preserve anonymity,

*“The claims in relation to Lynch.*

46. *Some 26 claims were commenced against an Anglican school in Brisbane regarding the alleged molestation of these individuals by one Lynch, a counsellor at the school. With striking similarity to the situation in relation to Guy, once a formal complaint had been made to the police and Lynch was charged he committed suicide shortly afterwards.*
47. *Civil proceedings were commenced, most by the same solicitors who acted for (AB in the Toowoomba litigation). They were aggressively promoted, including in various public forums.*
48. *There were some added complications in this litigation in as much as apparently good time limitation defences existed in respect of a certain number of the claims.*
49. *All of these claims were settled at mediation earlier this year. The existence of the settlement is publicly known, but the various amounts of settlement remained confidential. The settlements were made on terms satisfactory to Brisbane.*
50. *The essential facts situation underlying these claims were strikingly similar to those in relation to the AB’s case. Indeed, to the extent there was any real difference factually the instant cases were more problematic cases than AB. The matters which were instructive from how these cases were handled may be summarised as follows.*
51. *Firstly, it was in the face of these cases so shortly after the AB’s litigation that the Litigation Committee was formed. It was realised that for any attempt at settlement to be successful there had to be a mechanism for providing sufficient latitude and authority to an individual at the mediation to give instructions for the settlement of these proceedings, but with appropriate checks and balances.*
52. *Secondly, separate representation for the Diocese proved invaluable. The Litigation Committee instructed Brisbane’s solicitors to retain the services of a highly regarded personal injuries Counsel, who was himself an experienced mediator, ... Whilst there was a significant cost in this Counsel’s involvement in the preparation and five days of mediation it*

*proved a prudent investment. Counsel's involvement was critical in the final outcome both in terms of his dealings with the representative for the plaintiffs but also, privately, with the insurer when it came to negotiating a contribution on occasions to see a particular case settle. In these mediations there was obviously the spectre of exemplary damages so it was appreciated from the outset some contribution from Brisbane would be required.*

53. *This separate representation extended to Brisbane having its own independent assessment of what was a reasonable figure for each plaintiff so that it could be satisfied that the insurer was making a reasonable offer to settle.*
54. *Thirdly, meeting with the insurer well in advance of the mediations to resolve with the insurer any issues between insurer and insured. Again, this was a matter that turned out to be very important in the final outcome. It was during the course of these meetings, some of which involved fairly forthright discussions, that issues that would have been apt to stand in the way of a settlement were resolved.*
55. *In particular, difficult issues such as what contribution Brisbane would make to represent exemplary damages and how that contribution would be made in a particular case so that its negotiating position was not unduly compromised were discussed. Further, the approach in relation to time limitation was also discussed at this meeting. This was an important issue because it was always appreciated that the plaintiffs would turn to the Church and suggest that it was not a defence that it should in good conscience run. By meeting with the insurer first, it was possible to agree on an approach that avoided or ameliorated these sorts of issues and prevented the insurer using them by surprise for tactical purposes at the mediation to extract a greater monetary contribution from Brisbane.*
56. *It also left the insurer in no doubt that the manner in which it was conducting the litigation was the subject of careful examination by Brisbane. That said, matters proceeded at all times on a very co-operative basis.*
57. *Fourthly, at the mediations, in addition to the legal representatives for the insurer and Brisbane, there was present the Brisbane Registrar and the current Chairman of School Council and Headmistress of the school. Those persons were there to offer an apology on behalf of Brisbane and the school for what happened. **The importance of this in achieving satisfactory settlements cannot be overstated. ...** (Emphasis supplied)*

58. *Again it was a matter where preparation was repaid. In advance of the mediations a meeting was held with those persons who were to be present on behalf of Brisbane. Matters such as what form of apology would be offered were carefully discussed and canvassed. There is no doubt that the impact of the apology was much greater for it having been carefully thought out and refined in advance of being offered.*
59. *Fifthly, the experience was that in the course of a mediation it is important to keep the issue of apology and compensation as separate and discrete topics. The only case that did not settle during the week long period of mediations was the first one where the apology was offered and then the insurer's solicitors moved directly into explaining why, from a monetary point of view, the plaintiff's case was not a particularly strong one. Fortunately that case ultimately settled within weeks of the mediation.*
60. *By the end of the week a much more successful pattern had become firmly entrenched. It involved dealing with the issue of the apology up front and in the total absence of any discussion in relation to the value of the claim. Consequently, the representatives of the school and the Registrar would meet with the former student and usually at least one other member of the family, offer the apology and discuss generally what was being done for the future. It was only after that process had been fully talked out that there was then a quite separate discussion of what was acceptable monetary compensation.*
61. *Sixthly, successful resolution of such claims turned out not always to be purely about the dollar sum. The apologies loomed large as a feature in resolving these cases. Also important was the demonstration that the school, and the Church more broadly, was seriously addressing the problem.*
62. *Finally, significant in the settlements was the provision of counselling. Indeed in a good many cases a component of the monetary compensation was in fact an agreement to pay a certain sum of money over a period of time for the provision of counselling services. On the whole, when the parents of these former students, who were in their twenties, were involved they were highly desirous that any part of the settlement for counselling be by way of the Church paying the counselling service directly, rather than simply paying over a money sum to the plaintiff to represent it."*

13.4 Mr Dunning cogently demonstrates the desirability and value of an apology to the abused students. But these apologies were long in coming, and were made as part of the settlement of a claim. The Board considers a general and unconditional apology should be made once it is established that students have been sexually abused. The reason why apologies were not forthcoming in the Toowoomba cases, the St Paul's and other cases was at least in part because of the constraints imposed by the legal advisers, who were concerned that an apology would constitute an admission, and may void relevant insurance policies.

13.5 But there are ways and means competent lawyers can compose an apology which preserves the legal position of Diocese and the School. Additionally, to the moral requirement that victims of abuse should promptly receive an apology and at least the offer to provide counselling, there is a likely practical benefit. Students whose complaints are readily accepted, and apologised for, will generally be better able to cope with the consequences of the abuse, and be less likely to bring proceedings, and if they do, and succeed, damages will probably be less.

13.6 In the context of considering the efficacy and the desirability of apologies, it is appropriate to interpolate a letter the Board received from a mother of students at St Paul's, who after having detailed the very traumatic effects that the Lynch saga has had upon her and family, and her belief that it was her response to revelations of child abuse in Anglican schools which triggered a breakdown in her health, she writes,

*“I also hope that as a result of your Enquiry, some pastoral assistance can be offered to all those who have suffered collateral damage, including the great majority of those who will not choose to be identified. The most important group here would be the boys who were abused and have not shared this secret – for them, is it possible to include some statement to acknowledge their suffering and to reiterate that shame rests, not on the victims, but on those who fail to keep students safe at school. As well I’d include another huge group; all the parents and other friends and family with direct connections to individual boys enrolled at St Paul’s at that time; such people for example as my elderly parents who are disillusioned about the value of institutions which they had supported and believed in for many years. Is there some way this anonymous crowd, too, can know that their feelings along a whole range from disappointment to anger, despair and feelings of betrayal, are understood and that action will happen to minimise the risk such things will ever recur in the Anglican School system.”*

- 13.7 The letter is set out because it demonstrates and reminds of the effects of sexual abuse. Whilst a great deal of attention is given as to how complaints should be handled, the best solution of course is prevention.

### **The Assumption upon which the Diocese Settled**

- 14.1 The basis of the settlement was the assumed negligence of the Diocese.

The Board sought from the Diocesan and the Insurer’s solicitors confirmation of what appeared to be the obvious assumption, namely in the claims in respect of Lynch, that it was considered more likely than not that a jury would find the Diocese and its employees negligent and would probably award exemplary damages. The reply of Messes Flower & Hart was,

*“In relation to the claims involving Lynch we have no dispute with the assumptions which you have made, except that in relation to exemplary damages, the matter proceeded on the basis there was a “significant risk” rather than a “probability” that at least in some cases a jury would award exemplary damages.*

*... The principal concern in respect of exemplary damages was the suggestion that two students had informed Mr Case of the abuse or at least unusual behaviour by Lynch but were ignored and disciplined. The actions of the school following Lynch's suicide were not the significant issues. ..."*

14.2 The solicitors for Mr Case have made lengthy submissions to the Board that Mr Case should not be criticised

14.3 The Board considers that the basis upon which the claims were settled, namely the aforesaid assumption settlement was necessarily implied criticism of Mr Case, as the verdict of the jury was a criticism of the Headmaster of the Toowoomba Prep School, and other teachers for failing to take reasonable care of the Plaintiff. The assumption made and the basis upon which the cases were settled in the Lynch claims was tantamount to a verdict of the jury, because it necessarily implied that the Diocese and its employees had been negligent. The Board stated to Mr Case's solicitors as follows,

*"2.3 The lawyers for the diocese acted on the assumption that it was more likely than not, that a jury would find negligence on the part of the diocese and its employees. Thus if the claims had gone to trial by jury, it was assumed that more likely than not there would have been a verdict such as occurred in the Toowoomba trial, and that verdict would have constituted criticism inter alia of your client as the Headmaster of the School. Put another way the assumption that a jury more likely than not would find for the plaintiffs was tantamount to a verdict.*

*2.4 It is relevant to look at the Statement of Claim of student 2. In paragraph 3 of the Statement of Claim under the heading 'The Factual Background' appears:*

*"3. Lynch ordinarily conducted counselling sessions with students:*

*3.1 Alone;*

*3.2 In a locked room;*

*3.3 For periods of up to about three hours;*



3.4 *Using techniques of hypnotism, hypnotic audio tapes and relaxation of the student.*

4. *The Defendant, by its servants or agents:*

4.1 *Knew of each of the matters alleged in paragraph 3 hereof;*

4.2 *Alternatively, knew nothing of such matters, but:*

4.2.1 *Laid down no format or prohibitions in respect of such counselling sessions;*

4.2.2 *Made no enquiry, nor undertook any audit, review, or student enquiry as to the format or content of such counselling sessions.*

...

7. *In or about 1996, the Plaintiff 'complained to the principal of the Defendant (Case)' of the matters aforesaid and further complained that Lynch was exchanging his personal details with other students who were receiving counselling. Case rejected the Plaintiff's allegations and threatened him with punishment if he repeated the allegations."*

2.5 *The Statement of Claim then alleged various duties of the Defendant and under paragraph 28 gave Particulars of Breach:*

*"The Defendant breached its tortuous duty, the agreement, and its fiduciary duty and/or alternatively engaged in unconscionable conduct in that it:*

28.1 *Acted by Lynch in the incidents;*

28.2 *Failed to carry out any, or any proper supervision of Lynch, at any material time in and about his counselling;*

28.3 *Failed to carry out any or any proper, supervision of the Plaintiff at any material time;*

28.4 *Failed to take steps to reduce the likelihood of abuse by Lynch of the Plaintiff at any material time, even though the Defendant, through Case, knew or ought to have known of such abuse;*

28.5 *Failed to take steps to reduce the likelihood of abuse by Lynch occurring towards the Plaintiff at any material time;*

28.6 *Failed to take due and proper care in selecting persons to carry out and/or alternatively deliver counselling or guidance to the Plaintiff;*

- 28.7 *Failed to have audit or monitoring procedures or student feed-back procedures in place;*
- 28.8 *Once it knew or ought to have known that the abuse was occurring at the school in counselling, failed to take any steps to protect the Plaintiff from further abuse occurring;*
- 28.9 *Once it knew or ought to have known that the abuse was occurring at the school in counselling, failed to take any steps to protect the Plaintiff from further abuse occurring;*
- 28.10 *Once it knew or ought to have known that the deprivation of liberty was occurring within the school in counselling, failed to take any steps to protect the Plaintiff from further deprivation of liberty occurring;*
- 28.11 *Permitting the Plaintiff to undergo counselling with Lynch when it knew or ought to have known that such action was likely to result in injury to the Plaintiff;*
- 28.12 *Failed to act on reports of abuse by Lynch;*
- 28.13 *Failed to report acts of abuse, assaults and deprivation of liberty to appropriate authorities;*
- 28.14 *Failed to make rules with respect to the management and control of the school, in particular, rules with respect to the use of hypnosis or relaxation techniques, used on students by employees of the school including a published prohibition on hypnosis;*
- 28.15 *Failed to adequately supervise the said Lynch or inform itself of the method of counselling or guidance by him;*
- 28.16 *Exposed or caused the Plaintiff to be exposed to:*
- 28.16.1 *Deprivation of liberty by being in a room which was locked by Lynch to the exclusion of others, the Plaintiff not having any opportunity to remove himself from the counselling session;*
- 28.16.2 *Deprivation of liberty by being forced or misled into counselling;*
- 28.16.3 *Deprivation of liberty by being subject to hypnosis;*
- 28.16.4 *Abuse of a sexual nature by the:*
- 28.16.4.1 *Massaging of arms and legs;*
- 28.16.4.2 *Touching and fondling of genitals;*
- 28.16.4.3 *Masturbation of the Plaintiff;*
- 28.16.4.4 *Other inappropriate gestures and behaviour.*

28.17 *Permitted the use of hypnosis on the Plaintiff:*

- 28.17.1 *Without informing the parents of the Plaintiff or obtaining their consent;*
- 28.17.2 *Without informing the Plaintiff of the nature and effect of same;*
- 28.17.3 *Without advising the Plaintiff of the material adverse risks of hypnosis;*
- 28.17.4 *Without affording the Plaintiff the opportunity of having a third party present whilst the technique was being used;*
- 28.17.5 *In circumstances where the Plaintiff could not give his consent to undergo such technique because of age or infirmity.*

28.18 *Having known of the suicide of Lynch at the end of the 1996 academic year, failed to provide any counselling or extra tuition to the Plaintiff when it knew or ought to have known that he had been sexually abused by Lynch.”*

*That Statement of Claim is typical of the Statements of Claim lodged by the complaining students of St Paul’s.*

2.7 *One can assume that the question which would have been asked of the jury would have been substantially similar to the questions which were asked of the jury in the Toowoomba case. These relevant questions included:*

- 1.(a) *Did the Defendant fail to take reasonable care of the Plaintiff whilst she was a boarder at the Toowoomba Preparatory School?*
- (b) *...*
- 2.(a) *Did any of the Defendants employees fail to take reasonable care of the Plaintiff while she was a boarder at the Toowoomba Preparatory School?”*

*The jury answered “Yes” to both those questions.*

*One could therefore expect that what the jury would have been asked if the claim of student 2 had gone to the jury:*

1.(a) *Did the Defendant fail to take reasonable care of the Plaintiff whilst he was a student at St Paul's School?*

(b) *Did any of the Defendant's employees fail to take reasonable care of the Plaintiff whilst he was a student at St Paul's School?*

2.8 *It was the assumption of the lawyers that those questions or those to like effect would have been answered "Yes". Thus as in the Toowoomba case, the jury would have been satisfied that some or all of the particulars of breach had been established. The fact that this assumption was made and acted upon is proof of how the complaints were handled in the context of litigation.*

2.9 *It is immaterial as to whether the Board or anyone else would have made that assumption. Such a decision could only be criticised if it was such that no lawyers acting reasonably could have made it. Manifestly that is not the case.*

*Having said that, the Board however makes it clear that it considers the opinion of the lawyers, that it was more likely than not that a jury would have found negligence was clearly correct.*

### **Exemplary Damages**

3.1 *The same considerations apply to the assumption that there was a significant risk that the jury would make an award of exemplary damages in some of these cases. The Solicitors considered that the significant risk of exemplary damages arose in the context of the allegations by students 2 and 3 that they had told the Head Master of Lynch's misconduct and were ignored and disciplined.*

3.2 *As the Board has previously stated, if the claims had gone to trial the jury would no doubt have been urged to award exemplary damages by reference to a number of matters including the allegations in respect of the Head Master having been told. But it would not be surprising if a jury considered that the attitude of the Head Master in considering that the claims of student 1 were "vexatious, vindictive and entirely without foundation" as deserving of punishment by way of exemplary damages.*

3.3 *The Board will report that the conduct of the litigation, and including the assumptions made and acted upon, was fair, reasonable and appropriate."*

14.4 The solicitors for Mr Case also contested the proposition that he is open to criticism for his conduct, in that it may have attracted exemplary damages.

As is stated above the solicitors proceeded upon the assumption that the

significant risk of an award of exemplary damages would flow from the conflict between the testimony of Students 2, 3 and 4 and that of Mr Case.

Mr Case's solicitors submitted,

*"Assuming the Flower & Hart position will be the basis upon which you will make your findings, there is still little room for the Board to in any way be critical of our client. The fact that the diocesan lawyers were of the view that there was a possibility that the students' versions of their communication with our client would be believed, is a very tenuous basis for you making a finding that our client was in any way culpable. As everyone is well aware these particular students' versions were never tested. With the greatest of respect we are of the view that our client would have made a very credible witness such that even if there was confusion between his version of the conversation and those of the students, it would be very unlikely that anyone would have been critical of him."*

14.5 The Board replied to that submission,

5.2 *What the solicitors for the Diocese did was to assume that there was a significant risk that exemplary damages would be awarded because of the alleged conversations which the students had with your client. (It would have been open for the jury to treat the conversations alleged by the students as proof of breach of the duty owed by the Diocese.)*

*But what matters is the assumption upon which the solicitors for the Diocese and the Insurer acted. Even if the Board embarked upon an examination of all relevant witnesses as to the issue of what your client was told by the two students, its finding could not alter the **way in which the complaint was handled at the relevant time**. No doubt it was justified to consider that there was a significant risk that a jury would find that these two students had complained about Lynch's conduct. When the jury would be considering this issue, it would know that the students had both been the victims of serious sexual abuse. Given that the students sought to complain, it would be inherently probable that their complaint was about having been sexually abused. The allegation that their complaint was dismissed may well have been seen by the jury as reflecting the Headmaster's apparent impossibility, at that time, to even suspect let alone accept that Lynch could have engaged in sexual abuse.*

14.6 Once again the assumption made in relation to there being a significant risk of exemplary damages being awarded is necessarily an implied

criticism of the conduct of Mr Case. It must be stressed that what the Board is doing is to look at how the complaint was handled, the Board is not itself making assumptions, it is looking at those which were made.

- 14.7 The solicitors had also asked for the Board to particularise exactly the circumstances which would indicate Mr Case's confidence was misplaced (in his disbelief of Student 1's complaint). They stated

*"Our client does not dispute that he had at that time little belief in the accuracy of Student 1's complaint."*

- 14.8 The Board responded to that,

*"6.3 Your client's confidence that Lynch had an impeccable record and thus any suggestion that he had been guilty of sexual abuse was erroneous was maintained notwithstanding the police had charged Lynch and he had suicided. Notwithstanding that the student had a troubled school history for your client to effectively dismiss the complaint out of hand, was both surprising and unjustified."*

*6.4 It was only when further evidence in the form of the complaints by three students in April 1997 that your client realised he was wrong and that he had been duped. The unfortunate fact is that it is now clear beyond any question that the late Kevin Lynch was a serial paedophile."*

- 14.9 As recently as 11 April Mr Case's solicitors have submitted,

*"We can only repeat the matters we have previously raised in respect of the exemplary damages. In respect of the repetition of Student 2's Statement of Claim, it is incumbent upon the Board to consider equally the response by the Defendant. It would seem the Board has not considered or be prepared to critically examine the amended defence and in particular the claims which would appear it is common ground they can not be substantiated." (paras 17, 39)*

*In respect of commentaries that the statements of claim lodged were typical, the simple point is that the accuracy of the substance of the Student's claim was never tested. Accordingly it is dangerous to rely upon those documents as being a significantly*

*correct version of events. This is not so. With the greatest respect, the Board labours upon this issue of exemplary damages as being indicative of fault on behalf of our client as if the same has been proved beyond reasonable doubt. The Board has before it the conflicting view of the lawyers and the clients (including lawyer clients). The simple fact is that the testimony of the two students in respect of the meeting with our client was never tested and it is entirely inappropriate and without reasonable basis for the Board to make adverse findings against our client on this basis. “*

14.10 With great respect that is a misconception of the Board's view. The Board is not deciding the issue of whether the Diocese was negligent, and likely to be exposed to exemplary damages. The Board's duty is to determine the manner in which these complaints were handled inter alia in the context of litigation. In just the same way as the Board is bound by, and cannot go behind the verdict of the jury in the Toowoomba case, it must accept the fact that the Diocese (advised by its lawyers) made the aforesaid assumption and settled the claims on that basis. The Board repeats that the assumption was one that was clearly open to the Diocese and its lawyers to make. Even if the Board did not agree that assumption should have made, (which is not the case), it would have to proceed in the light of that assumption being the basis upon which the litigation of the claims was settled.

14.11 As in the Toowoomba case where it cannot be known whether the jury accepted all or some of the particulars of negligence, the assumption made in the Lynch case was that it was more likely than not the jury, would find that some or all of the particulars of negligence typified by the Statement of Claim in Student 2's case, would be made out.

14.12 The further assumption was there was a significant risk a jury would find that the conduct of the Headmaster in relation to the interchange with the two students would be seen by the jury as conduct justifying an award of damages. Again this assumption was clearly open to be made, and whilst in strictness once that is accepted, the Board's opinion is irrelevant, the Board also agrees that assumption was correct.

14.13 With reference to the statement "The Board has before it the conflicting views of the lawyers and the clients (including lawyer clients)" was because both Mr Knox and Mr Bernard Yorke initially expressed the view that there was no allowance for exemplary damages in the settlements. However while Mr Knox appears to maintain that position, Mr Yorke's solicitors have now advised that it is clear there was allowance for exemplary damages as was stated inter alia in the letter of Flower & Hart to Mr Yorke of 28 May 2002,

*"It is our view that any claim for exemplary damages will be based on the allegations of the claim of Student 2 and Student 3 that they complained to the Headmaster of the abuse in about 1995 or 1996 but that no action was taken. There are conflicting versions of the information alleged to have been given to Mr Case by the Students. Mr Case says the only complaint made to him that Lynch was divulging their personal information.*

*There are complaints by some of the claimants about the actions of the school and church subsequently and the school's action in not seeking out other victims (at the Insurer's direction) will also be criticised. However we think the major risk in respect of exemplary damages lies with the alleged complaints of Student 2 and Student 3 and also the extent of the undetected abuse. It is impossible to predict the amount of exemplary damages which might be awarded if one or more of these cases is tried.*



*Consequently our recommendation and that of (Counsel) is that an amount of ..... be set aside for exemplary damages in relation to the St Paul's cases and that we be authorised to pay that sum of money at the forthcoming mediations in an equitable manner where a claim for exemplary damages is made. ..."*

The letter concluded,

"We shall attempt to retain sufficient of the funds set aside for exemplary damages to enable the claims by Student 2 and Student 3 to be resolved. ..."

In summary, our recommendation is that authorisation be given to expend up to ..... at the mediations scheduled for the week commencing 3 June 2002 both in respect of claims for exemplary damages and claims which are out of time. ..."

## **Conclusion**

15.1 The Board finds that the complaints in respect of Kevin Lynch deceased were not handled fairly, reasonably and appropriately in the following respects.

- (i) The failure of the school authorities to take reasonable care of students at the school, which is reflected in the assumption made by the diocese and its lawyers that it was more likely than not that a jury would find that the diocese and its employees were negligent, and that there was a significant risk of an award of exemplary damages at least in the case of some students. This assumption was tantamount to a verdict of a jury finding that the diocese and its employees had been negligent.

The Head Master erroneously and untenably considered that the complaint of student 1

was vexatious, vindictive and entirely without foundation. This resulted in no investigation or other steps being taken for a period of approximately three months. It was unfair to student 1 to so unjustifiably dismiss his complaint, particularly in the light of it having been accepted by the police in the sense that they had charged Lynch who subsequently suicided.

Whilst this was unplanned, the public funeral memorial service in which Lynch was eulogised in generous terms, constituted a failure to handle the complaint fairly, because of the hurt and concern that an abused student, hearing or learning of that service, would feel.

- (iv) The failure to make a prompt public statement and an apology to the effect that:
  - (a) there had been sexual abuse by a teacher of a student or students;
  - (b) the school authorities were aghast and angered at this discovery;
  - (c) the teacher had been charged by the police and subsequently suicided;

- (d) a thorough investigation is being made to ensure the full extent of what has occurred is known;
- (e) the school apologises to the students who have been the victims of this unsuspected evil conduct, for the hurt they have suffered, and they can be assured the school will give them every support and assistance.

Dated the twenty-second day of April, 2003

Peter O'Callaghan Q.C.  
Chairman

Professor Freda Briggs  
Member

# **BOARD OF ENQUIRY**

## **into past handling of Complaints of sexual abuse in the Anglican Diocese of Brisbane**

### **Complaint No. 2**

#### **Schedule 1**

### **Statement of Students 3 - 8**

#### **1. Statement of Student 3**

Student 3 attended St Paul's School from 1995-97. He was first sent to Lynch when, in Grade 9, he was caught smoking marijuana with a group of peers at school. All of these boys attended a meeting with Mrs White and Gilbert Case. Parents were involved and they and Case decided to send the complainant to Lynch for counselling to determine the reason for taking drugs. The school principal was then concerned Student 3 was a victim of bullying and the recipient of homosexual taunts. Mr Case asked him if he was gay and he replied that he didn't know. He was then 14 years old.

Student 3 saw Lynch once a week over 4 weeks commencing in mid 1996 – Grade 9. As he was suspended at the time and not allowed to go to Lynch's office, *"the counselling sessions were held at his (Lynch's) house.*

*These appointments would range from between two and three hours”*

starting at 4.30 and leaving at 6.30 – 7 pm.

Student 3’s mother attended on the first occasion at which Lynch emphasised the confidentiality of sessions. The mother then went home. Lynch allegedly told the complainant that Gilbert Case was his friend of 30 years standing. He described their relationship as one of “great mates”. It would appear that without being qualified to do so and without parental consent, Lynch gave Student 3 a one hundred question test *“to rate depression and anxiety and concluded that the results of my test showed that I was 97% anxious and 98% depressed”* and *“had suicidal tendencies”*.

Student 3 was taken by surprise given that he had experienced none of the above.

Lynch questioned Student 3 relating to how he masturbated. He talked about being gay and told him that a member of staff was also being counselled because he was gay. Lynch adopted the role of a medical professional and took the boy’s temperature several times, listened to his heart through a stethoscope and took his pulse. He also made him shower and touched his body inappropriately.

Lynch lived near to Student 3. Sometimes he rode his bike to the house for “counselling” sessions and sometimes his mother collected him after

sessions. Showering, nakedness and inappropriate touching featured in these sessions. When Student 3 challenged Lynch and said that counselling was about talking and other counsellors don't do the things that Lynch did, he replied:

*“It takes 2 years to overcome your depression the normal way. If we do the physical way, it will be a lot quicker”.*

Lynch had “*certificates all over the wall*”. These added to the impression of unchallengeable expertise.

## **2. Statement of Student 4**

Student 4 commenced at St Paul's School in 1992 in grade 6

In the middle of his first year, he was sent to Kevin Lynch by a teacher, ....., because he was dyslexic. He remembered nothing about the second visit, other than arriving at Lynch's office where he was detained for 45 minutes and he arrived late to the next class.

He next saw Lynch in 1993 – Year 8. He was sent by an English teacher because he “*wasn't keeping up in class*”. He remembered Lynch saying that he needed relaxation and he remembered hearing the relaxation tape. A form of hypnosis was allegedly used. When he was told to count to three and open his eyes, he found his shorts undone.

*“This would happen 2 or 3 times a week and this went on right through to the end of Grade 10”..*

Student 4 was puzzled how this could help dyslexia and he thought he asked ....., a science teacher, what goes on up there. He said, "He's a counsellor, you'll have to ask him".

Early in 1995 (Grade 10), ....., the class teacher sent the complainant to see Lynch.

*"On these occasions I refused to go and told the class teacher that I did not want to see him. Despite my protests the class teacher sent me to see him anyway. I wagged the sessions I was supposed to have with Lynch on these occasions. Lynch used to regularly say, "Little boys don't speak out of school". This is why I never told anyone."*

Student 4 began to realise that something was wrong in June 1997 when he was surrounded by relationship problems. He gave hints to his parents but did not disclose what happened until after Lynch died. They did nothing about it. He told a friend. His brother, a fellow student, said that Lynch had done the same things to his friend, .....

### **3. Statement of Student 5**

Student 5 started at St. Paul's in 1992 in Year 5. Student 5's mother (was ill and he didn't know what to do). He couldn't talk to anyone about it and he thought of suicide from the overpass bridge.

(Student 5's mother had protracted treatment and Student 5 was referred by some of teachers to Lynch so that the latter could help him through the trauma of his mother's illness.)

The appointments initially lasted for approximately 30 minutes but they increased across two classes, sometimes extending into the lunch hour. The appointments continued from 1994 to 1996 but only while his mother was ill.

The first meeting with Lynch was mid 1994 when Student 5 was removed from school and taken to the hospital as his mother was in a critical condition. Lynch "showed up". He would take the boy aside and tell him to go to him if he needed to talk about his mother. The first appointment was "just chatting". After the initial session he saw Lynch twice a week. During the 5<sup>th</sup> or 6<sup>th</sup> occasion, he began improper touching. He talked about the mother's illness, upset him and used this as an excuse to hug and stroke him. This happened twice weekly for one month. One day, out of the blue, he allegedly questioned the boy about masturbation. After that, he talked about sex a lot. Student 5 thought this strange as it had nothing to do with his mother's illness) ... Lynch preyed on it, upsetting him then undressing him allegedly to calm him down. This took place in the relaxation chair, Lynch sitting on the arm. He undid the complainant's clothing and fondled his genitals but there was no physiological reaction. This continued for two months, then stopped for a while and resumed when his mother's (condition worsened). At that time, Lynch allegedly took the complainant's hand and got him to fondle the teacher's penis. He told the boy to relax and not think about his mother. The complainant thinks that hypnosis was used because the sessions seemed short and yet he had missed 1.1/2 to 2 whole periods when he left Lynch's office.



Eventually, the complainant stopped going to Lynch. He constantly made appointments for him through the housemaster, ..... He never kept the appointments and received a detention every week for not attending.

Student 5 did not tell the teacher what was happening.

*“In later years I hung around regularly with two other boys, Student 2 and Student . At one stage Student 2 told me that they had gone to Gilbert Case to tell him what was happening during their sessions with Lynch. Student 2 said that Gilbert Case had told them to stop lying and to go away”.*

He told his mother after Lynch died.

#### **4. Statement of Student 6**

Student 6 attended St Paul’s School from 1989 to 1995, commencing in Grade 5. He completed years 11 and 12 at Redcliffe High School having left St Paul’s in year 10. He was first sent to Lynch in 1990 (Grade 6) by his teacher ..... who made the appointment for him and gave him a permission slip. He was sent to Lynch for remedial reading and Lynch administered an IQ test without his parents’ knowledge or approval.

Student6 had to repeat year 6 on Lynch’s recommendation. Initially he saw Lynch once a week but after three sessions, it increased to twice weekly. Sometimes the sessions lasted for one class which was forty minutes. Sometimes they lasted for two periods, which was 80 minutes. Some sessions went into lunch breaks. This went on for three years and Student 6’s literacy problems became worse. In Grade 8 Student 6 realised there was something “odd” about what was happening. Another boy wanted to see Lynch because he had been anally raped by another

student. He needed to see the counsellor but was shy. Student 6 accompanied him. Lynch asked for a graphic description of what happened, enquiring whether the victim enjoyed it, whether his penis hardened, whether the boys were gay and masturbated and he instructed them on three ways to masturbate. They were shocked. Student 6 stopped seeing him. It would appear that this crime was not reported to the police.

Whenever boys went to the relaxation room, Lynch washed his hands and would “touch” them “like a doctor”. He was perceived as “doctor like”. Student 6 did not realise that what was happening was sexual abuse until a sex education lesson in Grade 8. He did not tell anyone because Lynch insisted on confidentiality about what happened in sessions.

Lynch wrote out slips explaining why boys were absent from class. Student 6 presented his to teachers, “that they would sometimes get annoyed or angry because I was missing class ... because I was going to have to catch up at what they had covered in class”.

Student 6 told his parents of the abuse in May 2000 when he saw a student disclose his abuse on T.V. He thought if someone had the guts to go public, he should too. Student 6’s parents had noticed a dramatic change in his personality after he started seeing Lynch. They said the alarm bells were ringing for them but they didn’t know where they were coming from.

## 5. Statement of Student 7

Student 7 joined St Paul's School in 1990 in Year 5. He left after completing Year 10. In Grade 6 he was made to sit and work outside the headmaster's office for a whole week for being disruptive in class.

Student 7 was first sent to Lynch on 21 August 1991 while in Year 7. The form teacher, ....., sent the boy to the counsellor for "learning difficulties". Thereafter, he saw Lynch for "counselling" up to three times a week for four years until Year 10. Until Year 9, the appointment lasted about one hour and they involved remedial work in Lynch's office at his desk.

In a session in Year 9, Lynch referred to relaxation exercises and asked him to go into his "other room" that adjoined the office. In this room there was a reclining chair. Lynch played a relaxation tape which included instructions for stretching and deep breathing. That is when Lynch introduced inappropriate touching. Lynch also ordered Student7 to handle his genitals. This continued until Student 7 left school in 1995. He was tense and afraid but dared not challenge Lynch given that he was in a position of authority. He did not tell friends because he believed that it would lead to peer group rumours that he was gay. He did not tell teachers because he didn't think it "would do any good". Student 7 told his mother about what happened after the Courier Mail disclosed Lynch's activities.

## 6. Statement of Student 8

In addition to detailing protracted abuse by Lynch, Student 8 also refers to contact with the Headmaster and Father Henry. The Board has not seen an original statement of this Student. What appears below is from the report of ..... a Consultant Psychiatrist.

*“Student 8 was interviewed on the 3 May 2002 regarding his claim for personal injuries associated with childhood sexual abuse (CSA) whilst a student at St Paul’s School. ...*

### 1. Nature and Extent of CSA

*1.1 Student 8 attended St Paul’s College from Grade 8 to midway through Grade 12 (1987 to 1991). He referred himself to the school counsellor Kevin Lynch as he was having difficulties due to being bullied. The bullying was also affecting his ability to attending class. He explained that Lynch had been highly recommended to of (sic) the students on school assembly.*

*1.2 Over time he built up a strong relationship with Lynch which continued not only at school, but after he left school.*

*1.3 He consulted Lynch at least twice per week beginning early in Grade 8. He described Lynch’s office as being “a retreat”.*

*1.4 He described a progressive change in the relationship with Lynch as the extent of the sexual abuse increased. ...*

*1.5 He recalled the early visits included general discussion and the administration of aptitude tests.*

*1.6 He was then introduced to the concept of relaxation. This initially required him to stand in the middle of the room with his feet together and eyes closed. Lynch would hold his arms to his side with his pushing against them and then let go. He was then guided to a recliner chair where Lynch undid his shirt, tie and belt. He was then given instructions to relax muscles and thus he would become sleepy, but would be feeling safe. He was instructed to imagine that he could see a bluebird flying. Lynch then applied pressure to his neck and chest.*

*1.7 As time progressed Lynch undressed him initially to underwear and finally removed all of the clothing. He repeatedly reassured Student 8 that this was part of therapy.*

- 1.8 Lynch next began to inquire about whether Student 8 had girlfriends and began to encourage him to masturbate for tension relief.
- 1.9 By the end of Grade 8 the relaxation sessions included him lying naked on a couch or in a reclining chair. Lynch would apply oils to his genitals and then place a small towel over him and encourage him to masturbate. This was encouraged as being an important part of tension relief.
- 1.10 He recalled that on occasions other students walked into the room, but he was obscured behind a screen. Lynch at a later stage installed a light control system to prevent unexpected visitors.
- 1.11 During Grade 9 the relaxation sessions continued, but Lynch then began to fondle and masturbate Student 8 to the point of ejaculation.
- 1.12 He believed that during Grade 10 he was requested to fondle Lynch's genitals. He said that he remembered holding Lynch's genitals. Lynch did not develop an erection at any time. Whilst holding Lynch's genitals, Lynch would masturbate him.
- 1.13 During Grade 11 and 12 there was a further extension of sexual activity to include Lynch performing oral sex.
- 1.14 Throughout these years of "relaxation" and sexual abuse Lynch repeatedly reinforced that this was a particular type of therapy. He would reinforce the safety of the situation particularly by reinforcing these ideas when Student 8 was in a deep sleep.
- 1.15 The sessions would often finish with Lynch flicking or pricking the head of Student 8's penis and commenting "we can't have you leaving here with an erection".
- 1.16 On leaving St Paul's School Lynch gave him his card and told him that he could continue to attend for therapy at his home. Lynch reinforced that this information was only provided to trusted people. Consequently he continued to see him on a weekly basis.
- 1.17 Lynch also befriended Student 8's parents particularly after he left school. Lynch was invited around to his family's home for dinner.

- 1.18 *He recalled on one occasion he had been stopped by police and charged with driving under the influence of alcohol. The police drove him close to his own home. He then ran back to Zillmere, got his own car and drove to Lynch's home. He recalled that Lynch told him that he had been foolish and then contacted his parents. The next morning the same type of therapy session was undertaken. However on this occasion Lynch inserted a thermometer into his penis (i.e. urethra) and rectum.*
- 1.19 *Student 8 continued to see Lynch. When he had lost his driver's licence for twelve months he rode a bicycle. He became increasingly friendly with Lynch doing small carpentry jobs and mowing his lawn. Consequently he was often at Lynch's home. He said that he had seen then current students of St Paul's visiting Lynch at his home.*
- 1.20 *In 1997 when Lynch suicided he was told by co-workers that they had seen a Coroners Unit outside Lynch's home. His co-workers had noticed his car outside Lynch's home quite often and had assumed that Lynch was his grandfather.*
- 1.21 *Shortly after Lynch's death he was playing social tennis when an older school acquaintance informed him that Lynch had been charged with sexual abuse of students at the school. He described his reaction as being one of shock and disbelief.*
- 1.22 *He coincidentally visited the headmaster, Mr Gilbert Case on the day of Lynch's funeral. However he had not been informed of the funeral. He asked Mr Case if it was true that Lynch had been charged with sexual abuse of students. Mr Case reportedly told him that "he had no knowledge of it". Mr Case requested Student 8 to go for a walk with him and asked of him if he knew as to any reason why Lynch would be blackmailed. Student 8 then offered to show Case photographs in a school year book identifying those ex-students who had informed him of Lynch's alleged sexual abuse.*
- 1.23 *He explained that Mr Case was aware of his long term relationship with Lynch as Case had 'phoned Lynch at home when he was present and he had heard Lynch telling Mr Case that he (Student 8) was in the house at the time. He was surprised that Mr Case had not notified him of details of Lynch's funeral. He was further surprised that Case had expressed no remorse or sympathy towards him over Lynch's death.*

- 1.24 *Student 8 subsequently learnt that Lynch had been arrested by police on the school premises. Consequently he knew that Gilbert Case had lied to him and he then felt betrayed by the school. He felt further that he had been “duped” by being requested to identify students who had made allegations to him privately.*
- 1.25 *Mr Case had also referred him to Father George Henry, the school Chaplain who told him a similar story about Lynch. As a consequence he felt betrayed by the Anglican Church and felt isolated with no-one to turn to.*
- 1.26 *Shortly before Lynch’s death, Lynch had alleged that he had been anally raped by two ex Grammar school students after a night of drinking with them. He said that he had been concerned for his health and had arranged for HIV testing.*
- 1.27 *Even at this point Student 8 described struggling to comprehend what had happened. He had always accepted Lynch’s sexual behaviour as part of therapy. He said that Lynch had become like a “grandfather figure” and had played a very important and long term role in his life. After Lynch’s death he had felt guilty that he had not done enough to help Lynch however as he began to hear of the allegations of Lynch’s sexual abuse he felt angry and the sense of betrayal emerged.*
- 1.28 *When the series of newspaper articles appeared in 2000 he was devastated. It was then that he fully comprehended that he had been the victim of sexual abuse by a paedophile. He confided in his partner which he said provided some relief. ...”*

# BOARD OF ENQUIRY

into past handling of Complaints  
of sexual abuse in the Anglican  
Diocese of Brisbane

## Report

### The Complainant

v.

### Donald Shearman (Respondent)

### Complaint No. 3

#### The Complaint

1. In July 1995 the Complainant wrote to Bishop Ron Williams, then the Bishop of the Southern Region of Brisbane, and a number of other Bishops, a letter which read:

*“The awful thing about this letter is I wouldn’t be writing, I wouldn’t even be in Australia except for my son ..... (the boy that Donald Shearman was looking for to taking a father’s place for). My son has been fighting a life threatening disease since Christmas Eve as a patient at St Vincent’s Hospital and I have been here also in hospital accommodation, doing my best to be supportive and of course unable to return to Germany to employment. I was expecting to have – which will now be long gone. Friends of Suzanna put me in touch with a woman in Brisbane who directed me to Tony Williams – Tony gave me your name and address and said in the first instance I must write to you and you would help me. I don’t actually want to make a complaint – but – if I must to receive the help I need, so be it. Donald Shearman’s relationship with me has spanned over forty years and began in a sexual way when I was a school girl, a student in his care when he was in charge of St John’s Hostel Forbes in the fifties.*

*Donald told me among other things that his marriage was a mistake and he wanted me for his wife – he even changed the wording of the blessing*



*at the end of service, so that I would know it was specially for me – then, when he didn't have the moral fibre (guts) to follow through – I was sacrificed and made a scapegoat for his problem – I waited patiently for Donald to organise his life, contact my parents and tell them the truth – so that we could be together – can you imagine how I felt when I heard Fay was pregnant again.*

*I married immediately and the violence on my person commenced almost immediately, my ex husband used to come home and drag me out of bed, bash me and rape me. I had a little gold cross Donald had given me. I used to hold it and ask God not to punish me anymore while being beaten – although I thought I deserved it because of what had happened with Donald.*

*After many years I finally went to the Rector in Temora for help, and he turned me away – I don't know who else I could go to but 'D' so I got in touch with him, all I wanted was help to escape with my children, but it became sexual. I remember asking 'D' if there was a chance for me (with him) and he never said 'no'. During this period I actually went to Ballina to be nearer to Grafton but I didn't stay there as I could see with 'D' staying with me overnight that it would cause huge scandal so I left and went to Queanbeyan – I remember Donald sent a priest in training to Canberra so that he would have an excuse to go there, this period ended when I demonstrated my love for Donald by being instrumental in encouraging him to attend Lambeth (he wasn't going to go – how I suffered for that).*

*Some years passed. It was 83/84 I was living in Wagga and managing very well ON MY OWN when 'D' decided to resign and come and be with me – we had twelve days together – before Richard Hurford found out where he was and came and collected him – Donald did say he would be back. At this time I went to Brisbane and met the AB – I very magnanimously told him that I wouldn't be putting any pressure on Donald – I felt so secure in 'D's' love. I trusted and believed him when he said that in twelve months time I would be his Easter bride – “*

*I still am unable to talk about what followed.*

*“I have spoken to 'D' a few times this year and said I needed to see him – however he refuses – but that is precisely what I want – I saw 'D' last in 1993 and wasn't then aware of the enormity of what had occurred – at this time in 93 I told him I had bought a house in SA and he could join me there when I returned from Europe in three years without causing any fuss or hurting the church – he was very pleased – but now – he says he's too old for me – well if this is so, why wasn't I too young for him when I was a school girl.*

*Donald's despicable behaviour has hurt me profoundly – it has damaged my sense of worth – had a devastating effect on my life – choice of partner and relationships and the repercussions continue.*

*It's time for this to be resolved with justice – and in as much as it can be to my satisfaction – with compassion and kindness from the church.*

*Please telephone me when you receive this. Night's are best excluding Tuesday and Thursday next week."*

2.1 The following extracts from the letter are explained.

*"Donald Shearman's relationship with me has spanned over forty years and began in a sexual way when I was a school girl, a student in his care when he was in charge of St John's Hostel Forbes in the fifties."*

The Complainant, was resident in a hostel conducted by the Anglican Church at Forbes between 1954 and 1956, and from which she attended High School.

The Respondent was the Assistant Priest in the parish of Forbes, and Warden of the hostel, assisted by his wife.

The Complainant says that sexual intercourse first occurred with the Respondent when she was fifteen, and continued for a period of eighteen months.

2.2 S. 71 of the **Crimes Act 1900 of New South Wales** provided:

*"Whosoever unlawfully and carnally knows any girl of or above the age of ten years, and under the age of sixteen years, shall be liable to penal servitude for ten years."*

However Section 78 provided:

*"No prosecution in respect of any offence under Sections 71 . . . of this Act shall, if the girl in question was at the time of the alleged offence over the age of fourteen years and under the age of sixteen years, be commenced after the expiration of twelve months from the time of the alleged offence."*

2.3 It follows that by the time the Respondent expelled the Complainant from the hostel (on what the Complainant said were spurious grounds) it would have been no longer open for the Respondent to be prosecuted.

2.4 *“Can you imagine how I felt when I heard Fay was pregnant again”.*

The Complainant says that she was assured by the Respondent that he would in due course come to her, but when she heard that his wife was pregnant, she abandoned that hope, and married. The Complainant says this was a most unhappy marriage, and ultimately “after many years” she got in touch with the Respondent, and a sexual relationship between them resumed.

2.5 Thereafter the Complainant had sexual relations with the Respondent, until he went to England in 1978. The Complainant and the Respondent corresponded. The Respondent frequently wrote to the Complainant assuring her of his love, seeking her patience, and looking forward to when they would be together. The Complainant has produced to the Board a number of such letters from the Respondent, which in turn were made available to the Respondent’s and Dr Hollingworth’s Solicitors.

2.6 *“Before Richard Hurford found out where he was and came and collected him, Donald did say he would be back.”*

In 1984 the Respondent gave notice of intention to resign as Bishop, and lived with the Complainant at Wagga for a period of twelve days. Bishop Hurford (then Dean Hurford) at the behest of the Respondent’s wife, went to Wagga, and returned the Respondent to his wife and family. The Respondent’s resignation as Bishop took effect in June 1985.

2.7 Bishop Hurford now the Bishop of Bathurst has described his role,

*"My response to the transcript of the Complainant's perceptions of my involvement in Donald Shearman and her relationship at the time in 1984 is as follows -*

*As far as I can recall when I was the Dean of Christ Church Cathedral Grafton at that time, I responded to the request of the then Bishop Shearman's distressed wife Fay to locate him as he had been missing for a time. She was able to direct me to the Complainant's residence in Wagga where I telephoned him asking him to return and apprising him of transport arrangements.*

*The then Registrar of the Diocese and I flew in a chartered light aircraft to Wagga to collect our then Bishop and he returned to his family and to the duties concerned at that time with the Cathedral's Centenary year. I was not aware at that point in time that he had resigned. That was the subject of later conversation.*

*The restoration of Donald Shearman to his wife and children was the primary issue as I recall it. The Bishop's resignation became public in May of that year and he was farewelled by the Diocese at the end of July. After some months of long service leave his resignation took effect in January 1985.*

*As to what the Complainant surmised about any conversations I may have had with Bishop Shearman at the time I can't really comment. ..."*

2.8 *" ... I returned from Europe in three years without causing any fuss or hurting the Church – he was very pleased – but now – he says he's too old for me – well if this is so, why wasn't I too young for him when I was a schoolgirl."*

The Complainant says that in or about 1993, it had been agreed that the Respondent would come and live with her at a home she had purchased in Goolwa South Australia. Whilst initially the Respondent was agreeable, in 1994 he eventually declined to do so telling the Complainant in 1994 that he was too old for her. There has been no further relationship.

## The Response of Bishop Williams

3.1 Bishop Williams replied to the letter of the Complainant on 15 August 1995

saying:

*"I am sorry that you have felt the need to write to me again and apologise for the delay in responding to you in writing. Believe me, I do have your interest at heart and I had tried to convey that in a telephone conversation in which I tried to assure you of the matter being given very careful attention.*

*Since I spoke with you then there has been a meeting with Bishop Donald and his wife and Archbishop Peter Hollingworth, with whom I have of course shared your initial letter. I await his decision now in relation to the next appropriate course of action and I will write again as soon as I have that.*

*Let me assure you again that the church does have your interest at heart and is anxious that it give good pastoral care to all parties in this matter, together with a commitment to see a just resolution for the good of all concerned."*

3.2 On 30 August 1995 Bishop Williams wrote again advising the Respondent that:

*"Archbishop Peter Hollingworth has had the opportunity to speak with Bishop Sir John Grindrod and one or two others. The making of these necessary connections for conversation accounts for the delay in responding to your initial letter."*

3.3 The letter then asked the Complainant whether she would be willing to come to Brisbane for the purpose of a face to face meeting with Archbishop Hollingworth and the Respondent, together with Tony Graham. The Complainant was agreeable to this, but because of the illness, and subsequent death of her son she could not do so immediately.

3.4 Ms Marilyn Redlich then the Chairman of the CCSA arranged the mediation as appears from a letter she wrote to the Complainant on 13 November 1995.

*"Dear (the Complainant's name),*

*It was good to meet you, by phone, last Thursday and Friday, the 9<sup>th</sup> and 10<sup>th</sup>, and I'm now writing as you asked, to summarize and note all of the points we discussed. Since the current establishing of the Sexual Abuse Complaints Network in the Brisbane Diocese and my appointment as Chairperson, Bishop Ron Williams has passed onto me a copy of the correspondence between you.*

*Firstly, I am distressed to hear of your suffering over all these years and I hope that, with the help of some of us in the network, you will be able to make healing changes to this situation.*

*Now I'll list the main points of our conversation.*

*Alana Bolger has offered to be your support person in Brisbane. You have accepted her offer. Alana will liase with you before your arrive, meet you at the airport, and accompany you into the meeting with Donald.*

*You have asked to see the Archbishop privately after the main meeting with Donald and I have agreed to ask this of the Archbishop on your behalf.*

*Your friend Dorothy will not be travelling to Brisbane with you.*

*I have discussed with you the possibility of including a mediator in the meeting to facilitate a positive outcome for everyone. This role would normally be required by our Complaints process but on this occasion it is optional. I see the presence of a mediator as safeguarding the good conduct and process of the meeting. In this case, a female mediator would be chosen. You have graciously accepted having a mediator present, although you yourself don't feel the need for one. We have not yet made a final decision on this point.*

*The issue of who will be present at the (sic) is an important one. There is ongoing discussion, even since our phone call, on this.*

- (a) yourself and Donald, (and your support person).*
- (b) The Archbishop. (The Complainant's name), you did not request his presence at the meeting, but you think now you will agree to it.*
- (c) It will not now be necessary for Mr Tony Graham to be present (since our conversation).*
- (d) There may be a female mediator.*
- (e) There may be a support person for Donald (since our conversation).*

*I have enclosed a copy of the Diocese' Protocol for your information. Please be aware that the Diocese received and initially managed your complaint without the benefit of the Protocol and that, likewise, the meetings on 4 December are outside of the steps you will find in the Protocol. This*

*occurred because of the transition from one system to another and, in itself, doesn't matter. However, I do want to ensure that we maintain a just and caring process in hearing your complaint.*

*You have asked what action the Church can take towards Donald after the meeting. I refer you to p.14 of the Protocol for a partial list of possibilities. I have also asked that you consider what action would be satisfactory/restorative from your point of view and that you ask for this in the meeting.*

*I have received your fax (of 14<sup>th</sup>, through your support person) requesting that I fax a copy of this letter to Tracey Spencer, your psychologist in Adelaide, and that I post a copy of this letter to her. This will be done today.*

*I hope this letter begins to clarify the present situation and your choices within the process."*

- 4.1 Prior to the mediation taking place, the Complainant had sought reports from three prominent persons, namely Thea Ormerod, co-author "When Ministers Sin", Christopher McCallum, Social Worker and Tracey Spencer of "Breaking Silence".
- 4.2 These reports were made available to Archbishop Hollingworth, and presumably, the mediators prior to the mediation. But it seems to the Board that the only function that the submissions could have achieved was the rescinding of the decision to conduct a mediation. Typically a mediation is a process whereby the disputing parties are brought together, and following discussion, a resolution of the dispute may be achieved by, on the one hand, one party to the mediation accepting somewhat less than what he or she hoped to receive, and the other party contributing more than he or she expected. To put it simply, a compromise. Certainly there seemed to be nothing wrong with

the concept of a mediation, if by that process a resolution of the dispute could be achieved.

4.3 Thea Ormerod was strongly opposed to a mediation stating inter alia,

*“I understood the Complainant has been appointed a “mediator” by those receiving her complaint of sexual and emotional abuse by a particular Anglican clergyman. This is very different to being appointed an advocate. I do not know how the appointed person interprets her role, but I would like to express my grave concerns about the implied expectations of a mediator in this type of situation . . .”*

But as is probably the position, and as is submitted on behalf of Dr Hollingworth, the setting up of the mediation was an informal mode of pastoral assistance, acted and relied upon because of the offences or misconduct of which the Complainant complained had occurred in another diocese.

Understandably, Miss Ormerod was probably not unaware of that.

4.4. Thea Ormerod proceeded:

*“What is needed is for the Complainant to have an advocate to help towards setting right the injustice. There is need for a public apology from the perpetrator and from the church, and offer of a therapy cost to be paid and compensation for pain and suffering. The offender should not be allowed to continue in the trusted and esteemed position of clergyman. This is not to say that he cannot belong to the Church, attend therapy, or be forgiven for his sins. But he has so betrayed everything he was meant to stand for that he no longer deserves the endorsement of the Anglican Church at representing God in any special way.*

*I hope this letter helps clarify the important distinctions which seem to be missed by Churches who set up mediation processes when grave injustices are brought to light.”*



4.5 Again Thea Ormerod is proceeding upon the basis that the Complainant was justifiable under the processes of the diocese of Brisbane. This was probably not the case as is discussed later. (See para 19.7)

#### 4.6 Christopher McCallum

This Social Worker wrote to Bishop Ronald Williams stating, inter alia:

*"I write with some urgency to impress upon you the need to give profound consideration to the plight of the Complainant, who has enjoyed forty years of anguish and deception through the misfortune of having been a student under the care of a member of your clergy Donald Shearman. I have been seeing the Complainant on a weekly basis for a considerable length of time, primarily for counselling, advocacy and support, and have come to the conclusion that her case is one of the most tragic that I have dealt with in many years of post graduate practice . . . that Donald Shearman is effectively responsible for the emotional turmoil and angst of the Complainant is ineluctable.*

*I implore you to do all possible to see that your Church will now demonstrate the meaning of Christian compassion and fully comprehend the pervasiveness of the Complainant's suffering and hardship when the time comes for her to meet with you. Bishop Williams, what has transpired is abhorrent and ignominious. The Church should not even subconsciously dismiss this case as merely another example of consensual relations. (The Complainant deserves better than this as her case is a complex and compelling one)."*

4.7 Tracey Spencer wrote,

*"I have met with the Complainant on two occasions and intend to meet with her a third time. The purpose of the meetings have been to offer support and information to the Complainant relating to her complaint of sexual misconduct against a member of the Anglican clergy . . . The Complainant had wanted to relate to me her experiences of three separate sexual relationships with the same man spanning a period of forty years. The first occurred when she was fifteen and he was the assistant priest and warden of the church hostel she attended for her schooling. The sexual abuse continued for eighteen months, ceasing when the warden expelled the Complainant over a minor misnomer (sic) leading the Complainant's parents to believe she was being expelled for sexual immorality with peers. This was a fabrication and adversely affected the Complainant's relationship with her parents. In my opinion, the power imbalance in this relationship, her description of his*

*“grooming” of her over a period of time to prepare her for sexual activity and the inappropriate discussions planning their future life together (when he had left his wife) constituted a sexually abusive situation and laid the ground work for the Complainant’s subsequent years of feeling helpless, hopeless and guilty and set her up to be easily abused by him in the future. The Complainant describes this happening when she contacted him as an adult asking for help in a very vulnerable situation and he responded by reinitiating sexual conduct, and raising her hopes of a life together. In my opinion, this second encounter is also abusive, since it was built on the prior abuse of dynamics, took advantage of the Complainant’s vulnerable position and included various promises “in the eyes of God” and using scriptural warrant from a then Bishop to a congregant. A third encounter was also abusive in these ways and included promises to the Complainant’s son as well. . .*

*It is my opinion that the Complainant has been grievously misled and exploited for over forty years and by a man whom she trusted and who had a mandate to pastorally care for her through his office of priest and subsequently Bishop. In cases of abuse, the consequences are exacerbated when the perpetrator is trusted and the abuse occurs over an extended period. Both of these are present in the Complainant’s case. Anyone involved with the Complainant in this manner needs to exercise utmost sensitivity and allow the Complainant space to regain control of her own life and confidence and her own value as a human being”. . .*

## **The Status of the Mediation**

5.1 To the extent that the mediation sought to resolve the complaints of the

Complainant, namely the sexual relationship she had with the Respondent at Forbes, and on occasions thereafter, and her dismissal on spurious grounds thus prematurely terminating her secondary education and loss of opportunity for tertiary education, this was dealing with matters which had occurred in dioceses other than Brisbane. It would appear the processes of the Brisbane diocese were not applicable. Be that as it may, the mediation took place in Brisbane on 4 December 1995.

## The Mediation

5.2 The Board sought from the participants in the mediation, a description of what took place. A number of written responses were received. Relevant extracts are set out.

## Response on behalf of the Respondent

5.3 The Solicitors for the Respondent, in their letter of 20 September 2002 wrote as follows:

*“8. In relation to the content of the mediation, on legal advice Mr Shearman declines to provide that information. In this regard we draw your attention to the absolute prohibition on the publication of, and the privilege attaching to, all that is said at a mediation, provided in S. 36 of the Dispute Resolution Centres Act 1990. In our view this prohibition would extend to your Enquiry and to any person providing any information to it.”*

5.4 The Board responded to that objection as follows:

*“With respect this seems to be an impermissible paraphrase of the provisions of Section 36. Section 36 (4) provides,*

*“Evidence of anything said or of any admission made in a mediation session is not admissible in any proceedings before any court tribunal or body.”*

*The phrase “proceedings before a court tribunal or body” means proceedings in respect of which a person’s rights can be affected by the making of orders.*

*“Body” is to be construed ejusdem generis with “court”.*

*The Board of Enquiry is not a “court tribunal or body”. It has no power to make orders affecting the rights of other persons. It has none of the powers typically held by a court, tribunal or body. (See R. v. Collins ex parte ACTU Solo Enterprises Pty Ltd 8 ALR 691 at 695.)*

*The Board therefore invites you to have your client give his recollection of what took place at the mediation. If he chooses not to do this, the Board has no power to compel him, but will proceed by reference to the descriptions given by the other parties as to what took place at the mediation.*

*The Board awaits your reply”*

- 5.5 On behalf of the Respondent, no further response as to what took place at the Mediation has been received. In a letter of 23 March 2003, the Respondent’s solicitors contend that no findings should be made as to what occurred because of conflicting descriptions. The Board rejects this contention. Whilst there are differences in the recollections of the persons at the mediation, the essentials are not in dispute, namely that the mediation failed, and that the Respondent did not apologise to the Complainant.

### **Response by the Complainant**

- 6.1 Relevant extracts from the Complainant’s description of what occurred at the mediation on 4 December 1995 appear in her letter of 29 August 2002.

*All discussions were via the mediator(s). I have the impression that there was a panel of three acting as mediators. We sat at a large table with mediator(s) at the top on my left. Donald Shearman and his support person sat directly opposite me and my support person sat on my right. The Archbishop attending as an observer, sat away from my line of sight while in full view of Donald Shearman. The mediator began by setting rules and expected outcomes. Donald Shearman opened his comments by delivering a flow of advice to me about “putting the past behind me and getting on with my life”. He also used the opportunity to state that I had encouraged him, citing two occasions when I was a schoolgirl in his care. My response was to state that at the time I was a minor and he had a formal duty of care to look after me. I also posed the question as to the purpose of his presence in the girls’ dormitory anyway? During the mediation Donald Shearman stated that after he had sent me home in disgrace, he had confessed to the Bishop of Bathurst in late 1956. I produced a draft of a letter for Donald Shearman to sign (I saw this a very important part of closure for me). Donald Shearman read the draft and said, “I understand where she is coming from” and refused to sign. After a short discussion, the mediator(s) declared the mediation failed. Alana Bolger may have a better recollection about the short discussion in hall on the way out, the Archbishop told me he had a pressing engagement and was too busy to see me, but would telephone that night. The short call was made but resolved nothing. The general impact of the day of mediation was that it presented nothing other than an opportunity for powerful people to abuse me all over again.*

6.2 The “draft of a letter” produced by the Complainant for the Respondent to sign was addressed to the parents of the Complainant, albeit that they were then deceased. Probably, the Complainant read the letter aloud. It read:

*“It is now over forty years since I first harmed the Complainant and betrayed your parental trust – I want you both to know that (despite what I led you to believe) the Complainant never did anything for you to be ashamed of, or to disappoint you; she was a wonderful girl with much potential.*

*I loved the Complainant. I told her my marriage was a mistake. I wanted her for my wife and the mother of my children – at least my eldest son, Tim. I often asked the Complainant how she thought you would feel about our marrying and our age difference.*

*I was a priest in authority, a position of trust and the Complainant was a schoolgirl – she trusted and believed in me. Lacking integrity, however, I chose not to take the necessary action to achieve what I longed for, so I violated that trust.*

*By victimising and exploiting the Complainant, I destroyed her girlhood. I interfered with her music lessons and school life. I used her shamefully for at least eighteen months and then I treated her mercilessly. I sent her away in disgrace. I expelled her from the Hostel.*

*I vilified the Complainant to you and to others and was cad enough to make her the scapegoat for me to hide behind. Consequently, I brought her higher secondary education to an abrupt halt.*

*My despicable behaviour has affected the Complainant profoundly. I damaged her sense of worth, harmed her psyche in such a way as to have a devastating effect on her, her life, choice of partner, future relationships and repercussions continue...*

*It was August in the church at Manuka and before God that I pledged myself to the Complainant, afterwards celebrating the day picnicking under a flowering wattle on Red Hill and now...it is eleven years (1984) since I found the honesty to resign from the Bishopric of Grafton so that finally the Complainant and I could be together.*

*I had twelve wonderful God-filled golden days with the Complainant and Paul before taking the first opportunity and the easy way out to betray them again and creep back to Grafton, but not before I had told the Complainant that in twelve months time she would be my Easter Bride, also lying to the little boy Paul was then, and convincing him that he and I and his mother had a future together.*

*On the way to the airport, I actually went into Paul's school classroom and told him I had to go away on business and that I would be back in about ten days and to look after his mother until my return..*

*Two vulnerable souls, and I betrayed them and so I **abandoned the Complainant, devastated and in dire circumstances for the THIRD time.***

*Donald N Shearman  
Ex Warden of St John's Hostel, Forbes"*

- 6.3 Whilst the letter certainly does not lack passion and resentment, the basic facts have not been denied by the Respondent, and have been confirmed by the Complainant orally, and by the production of contemporaneous documentation.

## Response of behalf of Dr Hollingworth with respect to the Mediation

7.1 On 20 December 2002 Dr Hollingworth's Solicitors wrote:

*"Dr Hollingworth's recollection is that the principal matters of substance raised by the Complainant related to:*

- *her bitterness about Mr Shearman's dismissal of her from the hostel for certain alleged or actual misdemeanours;*
- *the poor esteem in which her parents subsequently held her;*
- *the subsequent period in 1978 when he lived briefly with her; and*
- *her demand that Mr Shearman sign the letter prepared and tabled by her.*

*Dr Hollingworth does not recollect the Complainant raising the matter of intercourse with her at age 15, or any admission by Mr Shearman in that regard.*

*He recollects that Mr Shearman:*

- *listened carefully to the Complainant;*
- *asked her on a number of occasions exactly what it was that she wanted; and*
- *stated that he was not prepared to sign the letter tabled by the Complainant."*

7.2 Despite Dr Hollingworth's lack of recollection, the Board accepts the descriptions of the Complainant and the Complainant's support person (see below), that the events at the hostel were fully canvassed. It would have been surprising if they were not, because they were the crux of the Complainant's grievance.

## Response of the Complainant's Support Person

8.1 The Complainant's support person had been appointed the support person for the Complainant.

Extracts from her letter of response are as follows:

- “8. *The Mediation was described by the Mediator as following the standard procedures utilised by the Mediation Service with the exception of the inclusion of the then Archbishop of Brisbane, Peter Hollingworth, as observer. Both parties met in a series of joint meetings interspersed by meetings of the respective parties in different rooms. The Archbishop attended joint meetings of the parties.*

*During this process the Complainant outlined the substance of her complaint describing in detail the circumstances leading up to her residence at the Hostel, her life in the Hostel, the circumstances of her removal from the Hostel and her subsequent life including the continuing involvement of Bishop Shearman.*

9. *The Complainant described how the then, Father Donald Shearman had engaged her in a sexual relationship describing frequent sexual intercourse over an extended period of time when she was approximately sixteen years old and residing at an Anglican Hostel for Girls in the care of the Anglican Church and the manager of the Hostel, Father Shearman and his wife.*

*Bishop Shearman responded to this by saying that she had encouraged him.*

10. *The Complainant read aloud a letter she had written to her deceased parents explaining the circumstances and reasons for her being sent down from the Anglican Girls Hostel. She asked Bishop Shearman to sign this letter as author. She explained that her parents trusted him and had believed his story at the time of her removal and that she had not told them the truth. She said that it was important to her that her parents at last be told the truth by him about what had actually happened at the Hostel. Bishop Shearman said that he was unable to agree to do this.”*

- 9.1 In a later letter to the Board the Complainant described the ‘confession’ of the Respondent, namely that he had gone to the Bishop of Bathurst, and confessed to him what had taken place. He said to the Bishop of Bathurst that he wished to resign, but was persuaded not to do so.



- 9.2 The Respondent's Solicitors state that the Respondent contests matters alleged by the Complainant, but no specific denial of any matter is made. A suggestion that cross examination of the Complainant was not pursued albeit that the reason given was concern for the Complainant. The Solicitors contend that the Enquiry is going outside its terms of reference, in investigating the truth or otherwise of what occurred in the fifties and thereafter between the Complainant and the Respondent. The Board considers that it is relevant and necessary to ascertain relevant facts and circumstances, in order to determine the nature and extent of the complaint, and how the complaint of the Complainant was handled in 1995, 1996 and 2001.
- 9.3 Further, it is important to know that the Bishop of Bathurst was apparently informed of the matters of which the Complainant complains, and notwithstanding, persuaded the Respondent to continue in the ministry. The Respondent did so and was made a Bishop as early as 1964.
- 9.4 It is significant that the Bishop of Bathurst having been informed of the Respondent's conduct decided to continue his ministry. Assuming the true position was revealed to the Bishop of Bathurst, namely the exploitation of a young girl by a person in whose care and control she was, the decision even as long ago as 1956 to continue him in the ministry seems surprising. However the Bishop of Bathurst was the Head of the Diocese in which the conduct occurred and the decision to continue the Respondent in the Ministry, was a final decision, not open for review by the Bishop of another Diocese at some later time.

- 10.1 The mediation was designed to achieve a resolution of the matters raised by the Complainant. It would appear that predominantly, the Complainant sought at the Mediation an apology from the Respondent. Whilst the Respondent's refusal to sign the letter addressed to the Complainant's deceased parents is understandable, there is no evidence that the Respondent otherwise offered an apology. The Mediation was an appropriate place for such an apology to be made.
- 10.2 It has not been contended on behalf of the Respondent that he has ever apologised. As recently as 22 March, through his Solicitors, the Respondent repeated what he had said in an earlier letter, namely:

*"Finally, Mr Shearman has instructed us to convey his deep sorrow and concern to "the Complainant" for the trauma and hurt that she is suffering. He wishes it was not so, but he recognises that whilst the Enquiry continues and publicity is given to it and its considerations, that the Complainant's hurt and the hurt of others will continue. Regrettably he has no control over that process."*

This is not an apology in respect of the conduct of which the Complainant complains namely her seduction at the hostel in Forbes, her expulsion and deprivation of secondary and tertiary education; and further adulterous sexual relations including cohabitation for twelve days in 1984, and ultimately the rebuff in 1994. The Enquiry did not cause the hurt resulting from the above, the Respondent did. The express and implied requests for an apology from the Respondent long preceded the setting up of this Enquiry. This failure to apologise and otherwise to conciliate the Complainant has left the Complainant with a continuing grievance. The Complainant says that had she received an

apology, that would have concluded the matter. Even if that were not so, once the Respondent had apologised he could reasonably say I can do more. The past cannot be undone, but it could be apologised for, and perhaps to some extent explained. Deriving from the unconscionable conduct, of a priest, in commencing and continuing, what was on his part an adulterous relationship, was the eternal triangle, a situation which inevitably causes hurt to one of the three parties involved. It seems reasonable to assume that the hurt of the Complainant would, at least, have been alleviated by an apology.

10.3 The Solicitors for the Respondent have recently submitted,

*“Whether or not the Respondent ‘made an apology’ (and we do not accept your conclusion in relation to our letter of 20 September 2002) has absolutely nothing to do with your Enquiry.*

*It is permissible for the Enquiry to make findings about the way in which the Church handled the complaint – we do not argue against this. However, we again submit that it is not permissible to attack Mr Shearman personally, because it is not him that is the subject of the Enquiry, but rather the Church’s complaint handling procedures.*

*In our submission that is abundantly clear.”*

10.4 The Board considers it a novel proposition to say that as part of ascertaining the way in which the complaint was handled, the fact of whether or not Mr Shearman has apologised has nothing to do with the Board.

10.5 The Board considers that it is entitled and required to look at all the facts and circumstances involved in the handling of the complaint, including the conduct of those who participate in the complaint process, namely the Complainant and the Respondent. The Respondent was very much a participant in the complaint

handling process and the Board as has been submitted, does recognise that the Respondent voluntarily attended the mediation.

10.6 However, the Board considers that it is all part of looking at the complaint handling process, to observe that the Respondent did not and has not apologised, and that is an inappropriate aspect of the handling of the complaint. It seems strange for it to be submitted on behalf of the Respondent, that one can neither look at or criticise his conduct.

10.7 Further, as a retired Bishop, and at the relevant time holding a permission to officiate, the Respondent, albeit the subject of the complaint, was a person in authority in the sense that if he had apologised that may have facilitated the resolution of the Complainant.

10.8 Finally, it is submitted by the Respondent's Solicitors that:

*"A conclusion that all the Complainant wanted was an apology at the mediation, is not supported by the evidence. In our submission, that material clearly shows that an apology was not what the Complainant wanted from the mediation."*

With respect the evidence of what took place at the mediation only reveals one request or demand made by the Complainant, and that was the making of an apology, albeit in a form which was a notional letter to the Complainant's deceased parents. The Board is not aware of the Complainant asking at the mediation for anything more than an apology. As was pointed out by Ms Redlich, it was only after the mediation that there was a request for compensation and the deregistering of the Respondent.

## After the Mediation

11.1 The Mediator announced the Mediation had failed. That night the Complainant had a brief telephone conversation with Dr Hollingworth. She complains that this brevity prevented Dr Hollingworth knowing all the facts. Dr Hollingworth's Solicitors contend that because he had attended the mediation, and heard what took place, he did know the relevant facts. The Complainant, obviously disappointed at the failure of the Mediation, and what she perceived as continuing unfairness, wrote to Dr Hollingworth on 18 December 1995. As Ms Marilyn Redlich has pointed out, the Complainant now for the first time sought compensation, and the deregistering of the Respondent. She wrote,

*“Donald Shearman and the church owe me an enormous debt. . . I have now decided what needs to be done. . . Donald is to be deregistered immediately – and the justice for me is to be monetary restitution . . . that is \$100,000 now followed by \$2,000 a month tax free for two years.*

*This will not compensate me for the evil perpetrated against me by Donald Shearman – nothing ever can. Remembering also his hideous betrayal of my parents' trust. I was a school girl, a minor in his care, and he chose to betray every last vestige of decency – including the gross violation of his professional responsibilities . . . It wasn't just a one off lapse . . . it went on for eighteen months with assurances of our future together, until Donald sent me away in disgrace and made me the scapegoat for his problems.*

*I can't begin to list the damage done to me – a schoolgirl a schoolgirl destroyed . . . destroyed by a priest . . . followed by forty fractured years of victimisation and torment with all the devastating consequences that entails.*

*I'd like to know why the church didn't take disciplinary action in 78 or 84 and offer to help me then – instead of pretending I didn't exist. This abrogation remains impalpable. Donald's colleagues surrounded him and fed him “cheap” Grace, instead of holding him responsible for the dire situation my children and I were in because of his disgusting behaviour – which included pledges both written and verbal.*

*So . . . now. . . it has come to this.*

*I want confirmation of my demands by the 20<sup>th</sup> of January 1996. Failing this Donald will be facing criminal charges and I will proceed with legal action against the church."*

11.2 The Archbishop wrote to the Complainant on 21 December 1995

stating:

*"Your letter arrived on my desk on the last working day before Christmas and immediately prior to my going on annual leave. The matters that you raised cannot be dealt with within the time frame you prescribe. I am now taking legal advice having taken all steps possible to achieve a satisfactory solution through formal mediation procedures."*

12.1 On the 15<sup>th</sup> of February 1996 Dr Hollingworth wrote to the Complainant:

*"I made an initial response to your letter dated 18 December on 21 December immediately prior to Christmas and annual leave.*

*It is unfortunate that attempts made for formal mediation through the Queensland Attorney General's Department did not meet your expectations and did not reach a satisfactory conclusion.*

*There are a number of matters which I feel duty bound to advise you and the first is that having listened and absorbed the stories of both yourself and Donald Shearman and his wife, **there is a very wide discrepancy in your respective recollections of events and their outcomes.***

*I feel I should mention this because some of the information coming forward may not be easily substantiated as evidence either way, especially now, because there are very few witnesses available, or for that matter, alive.*

*The issue now is whether you have to weigh up whether an extended or expensive litigation in the Courts will achieve what you are seeking.*

*The second matter you will need to consider is who precisely can be sued as you seek restitution for your situation. As you are aware the Anglican Church of Australia is a loose linked collection of dioceses and the National Church has hardly any resources whatever other than to keep its basic national office administration functioning. The two dioceses concerned are those of Bathurst and Grafton and they are both struggling dioceses that have been devastated by drought and other problems. The Bishop of Bathurst is presently away on study leave for the next three months, but he is aware of your complaint, and he has advised his Vicar General and the Registrar.*

*I can assure you that the diocese of Bathurst would be in no position whatever to meet your demands. A similar situation applies in Grafton, and I have spoken with the Dean who is fully cognisant of everything that took place in 1978. He did indicate to me that he provided financial assistance to you, particularly in the last phase of your son's tragic illness.*

*As far as Bishop Donald is concerned, he and his wife are both pensioners and he is now about to turn seventy. They have very few financial resources and their life, too, has been racked with much pain and suffering. I do not mention here the diocese of Brisbane, because this is not an issue for our diocese as none of the events you refer to took place in Brisbane. Bishop Donald, being in retirement holds a Permission to officiate, and does not therefore have a full license. He undertakes locum tenens work on request, and his ministry is much valued by many people. If you want my own frank view of the situation he and his wife have also been through great pain, stress and anxiety over many years.*

*Please continue to correspond with me if you feel that we can be of some help to you. If however you decide to take legal action, then all future forms of communication will need to be through respective Solicitors.*

*This letter is written entirely without prejudice." (Emphasis supplied)*

12.2 On 23 February 1996 McCabe Brown, Solicitors wrote to Dr Hollingworth and, inter alia, said:

*"We note that in your letter of 21 December 1995 you indicated that the mediation process recently attended failed to achieve a satisfactory result.*

*It is somewhat surprising that you could reach such a conclusion when no financial compensation of any kind has ever been offered to our client. Our client has been more than willing to engage in mediation procedures, but of course as these procedures have failed to address the question of compensation it is the view of both ourselves and our client that no real attempt to resolve the matter has occurred. . ."*

The letter continued:

*"We reiterate that our client has suffered significant psychological harm consequent upon:*

1. *sexual exploitation by Reverend Shearman;*

2. *further psychological abuse over a protracted period due to the Reverend's callous disregard for our client's social, spiritual and familial needs and desires;*
3. *loss of educational opportunities and of a secondary education, with subsequent loss of the opportunity of pursuing a professional career. This occurred because our client was expelled from St John's Hostel, on spurious grounds, by her abuser.*

*Our client's damage is not yet quantifiable, indeed she is just becoming aware of her psychological injuries. She is now undergoing psychological treatment in an attempt to ameliorate her suffering.*

*Of course it is open to you to assist this healing process by financially compensating our client, notwithstanding the attitude expressed in your letter of 21 December 1995, which will do nothing to assist our client.*

*Accordingly our letter is to urge your reconsideration of your approach to our client. We advise that we have been instructed, if necessary, to institute proceedings against the priest involved and the Church of England. Our client is reluctant to adopt such a course however and she remains hopeful of a rapid resolution of the matter.*

*Similarly our client is reluctant to consider initiating a criminal investigation of Reverend Shearman's conduct, but again is mindful that this avenue of redress may yet be embarked upon.*

*We await your reply."*

12.3 On the 1<sup>st</sup> of March Dr Hollingworth acknowledged that letter and stated that he had written to the Complainant on 15<sup>th</sup> February, of which the Solicitors were not apparently aware.

12.4 In her meeting with the Board, the Complainant said the reason she had retained a Solicitor was because "Theo Ormrod had said you'd need one", and the Solicitors were those who had been acting it for "Friends of Suzanna". The Complainant said she spoke with her solicitor.

*"And I said, 'No, I'm going to handle it myself, the church are going to do the right thing,"*



by which she said she meant:

*"I thought they were going to deal with Shearman in the appropriate manner."*

And that she expected 'the appropriate manner' to be that he was not to preach ever again.

12.5 The tenor of Dr Hollingworth's letter (of 15 February 1996) reflected the Complainant's threat of litigation. It pointed to difficulties of proof, the expense of litigation, and the lack of financial capacity of the Respondent and the potential defendant dioceses in a claim for compensation. At least implicitly, Dr Hollingworth conveyed that the Brisbane Diocese was under no liability for compensation. It referred sympathetically and favourably to the Respondent. But it contained no disapproval of the Respondent's adulterous and exploitative conduct, nor any compassion for the Complainant. There was no consolation for her.

12.6 Dr Hollingworth's Solicitors have submitted that the letter of 15 February 1996 was not written to discourage the Complainant but *"simply to draw various matters to her attention so that she was better informed"*. Whatever Dr Hollingworth's intentions were, the letter certainly did not encourage the Complainant.

12.7 Dr Hollingworth's Solicitors in respect of that letter not containing a statement of disapproval wrote that the Board:

*"Failed to recognise that Dr Hollingworth was operating in a context in which he had consistently been provided with legal and administrative*

*advice that he should not make any statement of that nature that might potentially create legal liability for the Church.”*

The Board considers that notwithstanding, there were ways and means which could surely have been devised in consultation with management and solicitors to overcome or avoid these constraints.

12.8 Referring to the draft findings of the Board Dr Hollingworth’s solicitors submit,

*“However, we believe that the Board falls into fundamental error in its conclusion that it was inappropriate, and unfair to the Complainant , that Dr Hollingworth did not convey to her his personal view that Mr Shearman should apologise to her. In drawing this conclusion, it appears that the Board has chosen to completely ignore the substance of submissions previously put to it as follows:*

- *Dr Hollingworth was consistently advised by diocesan solicitors and administrators that it was inappropriate for him to make any comment to complainants that acknowledged allegations as true or expressed or implied any acceptance of Church responsibility for conduct that was the subject of such allegations;*
- *Dr Hollingworth was also advised that, if he were to make comments of this nature, he might expose the Church to a legal liability that it would not otherwise bear;*
- *Dr Hollingworth was further advised that the making of such comments might invalidate diocesan insurance and render the Church directly liable to meet damages or other costs arising from such matters and thus potentially unable to meet its pastoral responsibilities to its members;*
- *Dr Hollingworth, not being legally trained, was not qualified to reject that advice; and*
- *it was accordingly reasonable for him to act in accordance with that advice.*

*In not indicating to the Complainant his personal views about Mr Shearman’s conduct or about whether Mr Shearman should apologise to the Complainant, Dr Hollingworth was acting completely in accordance with his understanding of the professional advice provided to him. It would be grossly unreasonable for the Board to criticise Dr Hollingworth for doing so.*

*The Board may be of the view that the advice he was given was unnecessarily conservative and that it would have been possible for Dr Hollingworth to say further things to the Complainant without prejudicing the legal and insurance interests of the Church. But, as noted above, as he was not legally trained, Dr Hollingworth was not qualified to reject the advice provided to him or to formulate an alternative course of action.”*

12.9 Following the receipt of those submissions the Board fortuitously discovered what neither the Complainant or Dr Hollingworth’s solicitors had revealed that on 1 march 2002 Dr Hollingworth had written to the Complainant as follows.

*“Further to our telephone conversation of today, I am writing to set out the terms of the unreserved apology I delivered to you orally. What happened to you as a girl at the hostel was wrong and you were in no way responsible for it. I am deeply sorry for the words I used on “Australian Story” that suggested otherwise. I cannot try to explain or excuse them. All that matters to me now is that you should be aware of how sorry I am. There is little now that I can do but to express once again my apology and my regret for all that you have been through in the past and in the present. I cannot change the past but if I could I wish most of all is that you had never had to suffer the pain and anguish associated with things that have happened to you over the years. I confirm my willingness to meet with you and you may contact my Secretary.”*

The Board accepts that this was a full and appropriate apology, but belated.

The question is impelled if this apology could be given in March 2002 why was it not in 1996 or 2001. All it does is to say that Dr Hollingworth is sorry for Mr Shearman’s conduct. There appeared to be no dispute at any relevant time that the conduct had occurred. Even if made when he was Archbishop of Brisbane, or indeed Archbishop of Bathurst, nothing in the apology constituted an admission on behalf of the relevant Diocese.

13.1 The Complainant took no further action until 2001, because:

*“Well it’s quite clear in my mind and to anyone that knows, my interpretation of his letter (Dr Hollingworth’s of 15 February 1996) was he*

*didn't believe me – he said, your story is different to the Shearman's. I thought my story has got to be different, why doesn't he believe me, so there's no sense going anywhere with this and I was too, I was too broken, I couldn't you know, here's this priest I went to, well I didn't really go to him, he just took over and he's writing that my story's different – I won't get anywhere."*

13.2 The passage in the letter which apparently most concerned the Complainant was that in which Dr Hollingworth said:

*"There are a number of matters which I feel duty bound to advise you and the first is that having listened and absorbed the stories of both yourself and Donald Shearman and his wife, there is a very wide discrepancy in your respective recollection of events and their outcomes."*

13.3 The Complainant says:

*"That was calling me a liar. And the fact that Shearman's wife was backing him up, well most wives would back their husbands up. . ."*

### **The Events of 2001**

14.1 The Complainant says that by 2001 she was feeling a lot stronger. She had gone to the Bishop of Canberra, and sought advice as to bringing the Respondent before a Church Tribunal. However, when she was told that this would require lawyers and money, she considered an alternative approach, namely to seek a hearing before the CCSA, which she had been led to believe by the advices of Ms Redlich, was open to her.

14.2 In January 2001 the Complainant sought to obtain a copy of the protocol. She complains of great delay in obtaining the protocol. In her letter to the Bishops of 13 August 2001 she says,

*"I write to you because I am fed up with being treated with such disdain and hope you can enlighten me as to why my requests are being ignored.*

*I rang the diocesan office in January and asked for the Protocol handbook for sexual abuse complaints – I was told that I had to contact a committee member – after three or four phone calls this was achieved. I was told I had to put my request in writing – which I did immediately. I think I have written 6 X since – and the only response has been a variety of excuses per phone including "I need to get it from the diocesan office" (when the office had already told me they didn't have it) weather causes tropical lethargy.*

*"It's out of print. It's with the printer.  
It's in the hands of legal advisers.*

*There is a letter in the mail." (7/8) (Which to date has not arrived).  
Why am I being fobbed off. Could it be that various Christian people are protecting Donald Shearman and hoping he will die before I get the hearing I have asked for to which I am entitled.*

*The way I am being treated is a disgrace and a continuation of the abuse which began many years ago with our colleagues criminal behaviour.*

*I await your reply."*

14.3 Previously on 6 August Ms Kearney had written to the Complainant saying:

*"As mentioned many times in our phone conversations, the Protocol for complaints about sexual abuse is being reviewed and rewritten. However, as your complaint has already been mediated, there seems little further that we can do.*

14.4 It is not correct to say that in the case of a complaint over which CCSA has jurisdiction, after a failed mediation, nothing further can be done. In that situation a Complainant can seek a hearing.

14.5 In a letter from Bishop Appleby in September (see below)he wrote,

*"I think I am right in saying that the Chair of the committee responsible for the diocesan priest's procedure has advised that given the failed attempt at mediation, nothing further can be done in terms of this diocesan's procedure."*

14.6 With respect, Ms Kearney and Bishop Kearney may be right, but this is because it would appear doubtful that the CCSA, or indeed the Brisbane Diocesan Tribunal would have jurisdiction to deal with complaints or charges in respect of conduct which took place in another diocese, and when the Complainant and the Respondent were each resident there. This will be referred to later (see para 19.7).

15.1 The Complainant was concerned that, although “retired” the Respondent continued to officiate as a priest. When the Complainant contacted Ms Jacqui Kearney in January 2001 she stated that she wanted an apology from the Respondent, and an assurance that he would no longer preach or represent the church. A Complainant’s relative had informed her that the Respondent was working as a locum and she had seen him “on TV in all his finery”. When Jacqui Kearney informed the Archbishop of the resumption by the Complainant of her complaints, she understood that Dr Hollingworth was going to have another conversation with the Respondent reminding him that he had already asked him to “keep a low profile and to refrain from participating in big events and not to use the PTO”. In her response to the Board in respect of Dr Hollingworth’s statement that he had an oral agreement with the Respondent that he would keep a low profile, the Complainant says,

*“Since when was it ‘low profile’ to conduct Easter service 2001 in Brisbane Cathedral.”*

15.2 The Respondent did apparently preach in the Brisbane Cathedral during the Easter season 2001. Clearly this was not keeping a low profile. Ms Kearney has explained how this came about. There was to be a series of sermons over

five Sundays in the Cathedral called "Lent with the Bishops". The line up was Hollingworth/Appleby/ Williams/Noble/Smith. When one became unavailable Ms Kearney says that the Dean being unaware of the Respondent's position asked the Respondent to do it. However, it occurred it seems that it concerned and angered the Complainant.

15.3 This apparently caused her to write to the Archbishop on 1 April 2001,

*"I am writing in reference to the failed mediation that took place between Bishop Donald Shearman and myself in December 1995. At this time you were made aware of his criminal behaviour towards me, his betrayal of my parents' trust, his vilification of me, the truncation of my education when he made me the scapegoat for his problems, the continual sexual assaults which he perpetrated in the beginning while I was a minor and continued while I was in his care. At the time of the assaults he was assistant priest and warden at St John's Hostel Forbes where I was a boarder.*

*You heard his admission of guilt and you were also aware that he had confessed to his sexual abuse of me to the Bishop of Bathurst.*

*With your knowledge of these admissions I am surprised that the church is continuing its support for this person in allowing him to represent the church in preaching. I am appalled and disgusted at the complicity of the church in allowing this support to continue.*

*I am attaching counsellor's reports which were sent to you prior to the mediation and which corroborate the extent to which my personal life, my education and my subsequent relationships were prejudiced by the ostracating activities which this man embarked on. These reports were sighted in 1995 but apparently carried no weight in your deliberations. Again I am surprised by the ability of the church to protect its own even when guilt has been admitted, but to offer no such protection/support/help to the victim.*

*I have no idea how the church, which pledges the teachings of Jesus who denounced the actions of the priest in the Levite and commended the actions of the good Samaritan, can continue to shield and indeed reward this person and yet, leave me, the victim, with no justice of any kind. I am so disillusioned that I am resorting to the following action of collating the correspondence which I received from Donald Shearman and am considering the options available to me."*

15.4 On 10<sup>th</sup> April 2001 Dr Hollingworth replied stating:

*“This is to acknowledge your letter of 1 April with attachments that I received some years ago. I am disappointed that the matter has resurfaced because I had hoped that the serious efforts we made at mediation would have put things to rest in your own mind. Your renewed complaint relates to someone who is now well into their seventies, who has sought to resolve the matter with you and exercise contrition in a Christian spirit. I am sorry that you cannot accept the efforts that he and we have made which does allow for a new start with a penitent heart. I am sorry that you cannot accept this.”*

15.5 That letter is unsympathetic. Whilst Dr Hollingworth has subsequently stated to the Board through his solicitors that he *“in no way suggests that Mr Shearman’s alleged conduct can or should be condoned”*, there appears no instance of him conveying that to the Complainant. Rather, the letter chides the Complainant somewhat, for failing to *“accept the efforts that he and we have made” which does allow for a new start with a penitent heart*. Taken on its face, this was tantamount to saying a mediation was held and albeit that it failed, that is all that could or should have been done. If the Respondent had a penitent heart, again this was not conveyed to the Complainant.

15.6 The statement that he *“had hoped that the serious efforts we made at mediation would have put things to rest in your own mind”* seems unrealistic. The mediation had failed to achieve for the Complainant an apology, or any other benefit. That failure, unsurprisingly, had not put matters to rest in the Complainant’s mind.

15.7 Dr Hollingworth’s Solicitors, in criticising the Board’s comments in respect of the Mediation wrote on 11 April 2003,



*“Moreover, the Board appears to make no reference to the previous attempts by the diocese of Brisbane to achieve a reconciliation. In this regard we refer to the meeting between the Complainant and the Shearman’s in 1985 that was attended by Archbishop Grindrod at Mr Shearman’s request. On that occasion we understand that, following similar discussion to those at the mediation, it was believed that a reconciliation had been achieved. It is against this background of apparent reconciliation and later background that Dr Hollingworth’s decision that there was nothing more than he or the diocese of Brisbane could do to assist the Complainant should be assessed.”*

15.8 The Complainant has refuted this. She says that in late May or early June 1984 she was telephoned by the Respondent who said that Archbishop Grindrod wanted to see the Respondent and his wife to have a chat. The Complainant believed it was in relation to the Respondent having given notice of intention to resign, and having promised her that he would resume the cohabitation that had occurred a month or so earlier in Wagga. She then said that if there was going to be a discussion with Archbishop Grindrod then she wanted to be present so that the Archbishop could see that she was not a person who preyed on priests. In fact the Respondent stayed with Bishop Grindrod and his wife overnight.

15.9 On the other hand Dr Hollingworth says that albeit that the Complainant had told Dr Hollingworth in March 2003 that the reason for seeing Dr Hollingworth was as she described, Dr Hollingworth’s Solicitors state that Dr Hollingworth had been informed by Bishop Grindrod that the purpose of the meeting was to have a mediation to ensure the continuation of the Shearman marriage.

15.10 The Solicitors also said in the letter of 11 April:

*“Nor does the Board appear to make any reference to the attempts that we understand were made by the diocese of Bathurst, under Bishop Hurford, to assist in achieving reconciliation but from which we understood the Complainant withdrew. While the conduct of the diocese of Bathurst is not a matter on which the Board is asked to form judgments under its terms of reference, those attempts and the Complainant’s attitude are nevertheless relevant in considering whether or not there was anything more that the diocese of Brisbane could reasonably have done to assist the Complainant.”*

15.11 The Complainant says that after initially contacting the Bishop of Bathurst by a personal letter, she was advised by one Wendy McCarthy that she needed legal representation, and she retained Slater & Gordon.

15.12 On 27 August 2002, the Solicitors for Bishop Hurford, Messrs Truman Hoyle (T.F. Edward, partner), wrote:

*“Re the Complainant*

*We are instructed by the Right Reverend Richard Hurford the Bishop of Bathurst and by the Anglican diocese of Bathurst and have been handed copies of your letters to the Bishop dated 2 July and 8 August 2002. We have taken preliminary instructions and expect to receive detailed instructions over the next week and will contact you again when those instructions are to hand.”*

15.13 On 4 October 2002 the Complainant’s Solicitors, Messrs Slater & Gordon (Mr W J Madden, partner) wrote to Mr Edward:

*“Thank you for your letter dated 22 August 2002.*

*It seems that over a month has elapsed however I do not appear to have received any further correspondence from you.*

*Perhaps you could indicate when you expect to have your client’s instructions so as to be in a position to respond.”*

15.14 On 18 December 2002 Mr Madden wrote to the Complainant:

*“Please accept my apologies for the delay in further correspondence. However, the progress of your matter has been disappointingly slow.*

*You may recall that I had initially written to the Archbishop of Bathurst on 2 July 2002. In the absence of a response I sent a reminder on 8 August 2002 which produced a letter from Trueman Hoyle Lawson dated 22 August 2002. . .*

*In the absence of any further correspondence I wrote to Trueman Hoyle on 4 October 2002 but did not receive a response. I therefore telephoned the Solicitor Mr Edwards on 11 December 2002, but unfortunately was unable to speak with him that day as he was not in the office.*

*I left a further message on 16 December 2002 and hopefully will receive a response.”*

15.15 On 16 January 2003 Mr Madden reported he had endeavoured to contact Mr Edward who was away until 28 January 2003.

15.16 On 11 February 2003 Mr Madden reported to the Complainant.

*On 4 February 2003 I was finally able to speak with Mr Edwards the Solicitor representing the Bathurst diocese. Mr Edwards apologised for the lengthy period which had elapsed since our earlier communication. He told me that he had prepared a letter in draft form which had been sent to the Bishop for approval prior to its dispatch.*

*Apparently the draft letter was sent to the Bishop some two months or more ago but Mr Edwards has not received approval.*

*I expressed my concern at the delay and asked how he saw the matter progressing in the future. ...*

15.17 A further letter of 20 March 2003 from Madden to the Complainant said that:

*“As at 19 March 2003 I had received no further communication from the Solicitors for the Bathurst diocese.*

*I endeavoured to speak with Mr Edwards on 19 March but was unfortunately unsuccessful.”*

15.18 On 4 April 2003 Mr Madden wrote to Mr Edwards saying:

*“It would be helpful if you could indicate within 14 days whether your client does in fact wish to address this matter or if not it would seem that the Complainant has no option other than to pursue the matter through other means.”*

15.19 On 14 April the Complainant had written to Bishop Hurford detailing the correspondence and telephone calls which had occurred and concluded:

*“I now respectfully request a written reply to my question that I posed to you in my letter of August 2001.”*

15.20 It is the fact that the Board is not concerned in the strict sense with what happens in the diocese of Bathurst, but it is necessary to refer to that correspondence which refutes that the Complainant withdrew from any process of mediation or reconciliation in Bathurst.

15.21 There is a further submission from the Solicitors explaining that assertion:

*“Bishop Hurford has informed Dr Hollingworth that an appointment was made but broken by the Complainant (apparently for family reasons) and that she has made no approach for a further appointment to pursue mediation despite the passage of a relatively long period. It is on that basis that it had been presumed by the diocese, and was stated in our previous letter, that she had withdrawn from the mediation process.”*

That is obviously mistaken.

16.1 The letter of 10 April 2001 appears to be Dr Hollingworth’s last involvement in the matter, in his capacity as Archbishop. He was sworn in as Australia’s 23<sup>rd</sup> Governor General on 29 June 2001.

16.2 Dr Hollingworth did not further refer to his decision not to withdraw the Respondent's permission to officiate. Impliedly at least, he had rejected the Complainant's request for some such action in the letter of 15 February 1996.

17.1 The basis of that decision, and other comments appear in the letter from Dr Hollingworth's solicitors of 20 December 2002 extracts from which are set out:

*"In relation to the Board's preliminary findings of facts more generally, Dr Hollingworth makes the following observations.*

*The underlying matters to which the Complainant's complaints relate occurred many years ago and outside the Brisbane Diocese. As Archbishop, Dr Hollingworth's involvement was limited and confined to:*

- 1. seeking to assist the Complainant and Mr Shearman to reach some form of mutually acceptable understanding, and possibly reconciliation, between themselves; and*
- 2. responding to the Complainant's demands for compensation; and*
- 3. assessing whether the Complainant's complaints in relation to Mr Shearman's past conduct warranted any withdrawal of, or limitation on, his entitlement to practice his ministry within the Diocese.*

*Dr Hollingworth notes that the Complainant's complaints were directed to and handled by a number of office holders within the Diocese of Brisbane. While Dr Hollingworth accepts that, as Archbishop, he was ultimately responsible in a titular sense for the Diocese's handling of the complaints during this period, he notes that none of those familiar with the circumstances of the Complainant's complaints recommended to him any different course of action. Indeed, it is his understanding that such other persons supported the position he adopted and regarded it as being, at the time and in all circumstances, fair, reasonable and appropriate.*

*Mr Yorke's memorandum to Dr Hollingworth of 14 February 1996 provides an example of the legal and management advice consistently and generally provided to Dr Hollingworth relating to the need to avoid any possible prejudice to the Diocese's legal and insurance position in handling complaints of sexual abuse. Dr Hollingworth's response to the Complainant's demands for compensation was consistent with that advice.*

*It is common ground that no satisfactory resolution between the Complainant and Mr Shearman was able to be facilitated. Attempts at such resolution were made not only by Dr Hollingworth but also by a number of others, including professional mediators.*

*Dr Hollingworth did give consideration to the question of whether or not Mr Shearman should be allowed to continue to conduct his ministry. While the Complainant argued that his permission to officiate should be revoked, Dr Hollingworth considered the following factors to be relevant:*

- *the early date at which the events of the Complainant's complaints occurred*
- *Mr Shearman's expression of remorse and his endeavours to conciliation with the Complainant*
- *the absence of complaints by others in relation to Mr Shearman's conduct generally or, in particular, in relation to his conduct of his relationship with those for whom he had a pastoral responsibility*
- *the fact that Mr Shearman was, by the time of Dr Hollingworth's involvement, formally retired from active full ministry in the Church*
- *the fact that Mr Shearman's limited permission to officiate was exercised by him in locum tenor that were apparently highly valued by those familiar with his work; and*
- *the potential pastoral and financial consequences for Mr Shearman and his wife if that permission were revoked.*

*Dr Hollingworth's view was that, on balance, and without in any way condoning Mr Shearman's past conduct of his relationship with the Complainant, it was neither necessary nor appropriate to withdraw Mr Shearman's permission to officiate.*

*Notwithstanding that decision, Dr Hollingworth did reach oral agreement with Mr Shearman that he would keep a low profile, not take on any new locum tenancies and not exercise his Permission To Officiate within the Diocese of Brisbane for the time being. In forming the view that such an agreement was appropriate, Dr Hollingworth had regard to a number of considerations. First, he was concerned to avoid any needless emotional hurt to the Complainant through her observation of prominent activity on Mr Shearman's part. Second, he was concerned to avoid any needless damage to the good standing of the Church should the Complainant decide, as then appeared likely, to publicise her complaints against Mr Shearman. And third, given his opinion that it was not appropriate to preclude Mr Shearman from practising his ministry altogether for the reasons set out above, he believed it would unfairly affect Mr Shearman to take any more severe action. To this extent, therefore, his actions achieved the*

*same outcome as his successor's later direction to Mr Shearman that he not exercise any ministry within the Diocese.*

*As to the Complainant's difficulty in securing access to the "Protocol Book", Dr Hollingworth notes that the diocesan protocol for the handling of sexual abuse complaints was at the time being rewritten and revised. While he was unaware of the Complainant's numerous requests for a copy of it, he accepts that it would have been appropriate for her to have been provided with a full explanation of the reasons for delay. He is unaware whether Ms Kearney or anyone else in fact provided such an explanation or, if not, why not."*

- 17.2 It is relevant that the complaints were substantially of misconduct which "occurred many years ago and outside the Brisbane diocese". That presumably limited the power and entitlement of the Brisbane diocese to take action on behalf of another Diocese, but it did not prevent compassion and concern being shown to a woman, who had been wronged by a retired Bishop, now resident in the Brisbane Diocese with Permission to Officiate.
- 17.3 It was not until after the mediation that the complainant asserted an entitlement to compensation. Indeed she told the Board that her retention of a Solicitor was a short lived matter and as appears in paragraph 12.5 above, she told him that she did not want him to go on with it. Her foreshadowing a claim for compensation no doubt led to the strong tone of the Hollingworth letter of 15 February 1996.
- 17.4 Following the Mediation, the Complainant also sought for the first time that the Respondent be "deregistered", which was apparently taken to mean the removal of the Respondent's Permission to Officiate (the "Permission"). Dr Hollingworth's reasons for refusing to withdraw the permission appear in 17.1 above. The Board notes that one of the reasons was "Mr Shearman's

expression of remorse and his endeavours to conciliation with the Complainant". As previously stated it does not appear that the Respondent made any expression of remorse to the Complainant, though he apparently did to Dr Hollingworth. It was written that Dr Hollingworth after considering the factors referred to in 17.1 above decided,

*"On balance, and without in any way condoning Shearman's past conduct of his relationship with the Complainant, it was neither necessary nor appropriate to withdraw Mr Shearman's permission to officiate".*

- 17.5 The question of whether Dr Hollingworth in his capacity as Archbishop acted fairly, reasonably and appropriately in declining to withdraw the position is a difficult one. Notwithstanding long discussions and considerable and careful consideration, the Chairman and Professor Briggs are unable to agree on this aspect.
- 17.6 The Chairman whilst recognising the force of arguments to the contrary considers that in the circumstances Dr Hollingworth in exercising his discretion not to withdraw the Permission was acting fairly, reasonably and appropriately. The Chairman considers that on balance the stated reasons for the decision (see para 17.1) justified it. Put another way, the Chairman considers that this was a case in which it was open to a bishop acting reasonably to decline to withdraw the Permission.
- 17.7 Professor Briggs considers that once Dr Hollingworth, in his capacity as Archbishop, was apprised of the serious misconduct of the Respondent should,



in order to demonstrate proper moral leadership, have withdrawn the permission. His failure to do so was in the circumstances inappropriate.

17.8 Dr Hollingworth's solicitors have submitted in this respect,

*"As to paragraph 17.6, we of course agree with the Chairman's view that Dr Hollingworth acted reasonably in not withdrawing the Permission to Officiate. Dr Hollingworth similarly recognised the arguments to the contrary and did not take his decision lightly. However, he did consider it reasonable in all the circumstances.*

*As to paragraph 17.7, we of course disagree with the view of Professor Briggs. Dr Hollingworth considers that proper moral leadership is demonstrated by taking difficult decisions after a balanced consideration of all relevant factors, rather than simply taking easier decisions that accommodate the interests of only one party."*

18.1 Following the appointment of Dr Hollingworth as Governor General Bishop Richard Appleby was the Administrator of the Brisbane diocese and on 19 September 2001 he wrote to the Complainant:

*"Last month you wrote in similar terms to Bishop John Noble, Bishop Ron Williams, and Bishop Raymond Smith. I am writing on behalf of the three Bishops to both acknowledge your letters and to respond to issues raised in your letter.*

*You write in your letters that you have written because you were told that Donald Shearman was enjoying preaching and being a locum. Whilst it is true that he has exercised very occasionally such ministries in recent times, however I must now inform you that I have spoken with him and informed him that he must not exercise any such ministry within the diocese of Brisbane.*

*I am unclear from your letter as to whether, in fact, you do have a copy of the diocesan Protocol for use when complaints are made against church officials. Just in case you do not have a copy, one is enclosed for your information.*

*I think I am right in saying that the Chair of the committee responsible for the diocesan priests procedure has advised that given the failed attempt at mediation, nothing further can be done in terms of this diocesan procedure.*

*You make reference in your letters to criminal behaviour. Lest there be any confusion, I must make it absolutely plain that the diocesan Protocol does not apply in the case of criminal matters. (See Section 3 (a)(i)) I do apologise for the delay in replying to your letter to the three Bishops.”*

18.2 On that date Bishop Appleby wrote to the Respondent:

*“Further to our recent telephone conversation, I confirm your agreement that you will no longer exercise any ministry as an ordained person in the diocese of Brisbane. You will understand that this decision has the effect of cancelling the permission to officiate which was issued to you in 1986.*

*I do thank you for your ready understanding and co-operation concerning this matter.*

*With every good wish.”*

18.3 On 31 January 2002 the Complainant wrote to Bishop Appleby acknowledging receipt of the letter and explained her delay in replying was due to her having just returned to Australia.

*“I am relieved to know that Shearman is not to exercise ministry in the Brisbane diocese, however that still leaves the rest of Australia exposed to him.*

*Thank you for the copy of the Protocol for sexual abuse. I had the impression from the delay in sending it – nine months – that it was being withheld.*

*At the time of the failed mediation I was told by Anglican officials, including Marilyn Redlich, that I was entitled to a hearing. I again formally request a hearing.”*

19.1 Dr Aspinall was installed on 2<sup>nd</sup> February 2002. Prior to this there had been much publicity in respect of sexual abuse complaints and included in that publicity was the complaints of the Complainant in relation to the Respondent.

19.2 On the 14<sup>th</sup> of February 2002 a press release from the Governor General stated:

*“A spokesman for the Governor General said that, as Archbishop, Dr Hollingworth had observed a Supreme Court mediation session between the woman and the already retired cleric. He formed the view that removal of the cleric’s PTO (Permission to Officiate) was not warranted given that these events had taken place forty years earlier. Dr Hollingworth stands by the judgment he formed at the time and notes that, by agreement, the cleric no longer officiates publicly. . .”*

19.3 On 1<sup>st</sup> March 2002 Dr Aspinall wrote to the Complainant:

*“We have received your letter requesting a hearing. Could you clarify for us whether you would like to talk to us again or whether you are referring to a formal hearing as mentioned on page 9 of the CCSA Protocol.*

*It may be possible for you to access a formal tribunal process under the Canon’s & Constitution of the Anglican Church. Would you like more detailed information about this.*

*If there is anything we can do to assist you at this time, please let us know. We are anxious to ensure that you have any counselling and support that you need.*

*The range of options available to you, including going to the police, or accessing civil court procedures have been discussed with you in the past. We need to check our own files about the past mediation process here so that we can advise you if any further documentation is required. In the meantime, please let us know if there is any way we can be of further assistance.”*

19.4 On the 4<sup>th</sup> of April 2002 the Complainant wrote to Archbishop Aspinall:

*“Thank you for your letter 1/3. Yes – I was referring to a hearing re CCSA Protocol however – I would now like the information re Tribunal under Canon’s Constitution of the Anglican Church.*

*Thank you for your offer of assistance –*

*I do need to have counselling – but am unable to concentrate on myself right now. As far as support is concerned – who can I trust. No doubt your secretary has told you of my desire to be part of your closed Enquiry. I await your reply.”*

19.5 On 19 April 2002 the Archbishop replied:

*“Thank you for your letter of 4 April 2002.*

*Your case will definitely be going to the Enquiry at your request.*

*As I have already indicated, we are hopeful that the head of the Enquiry will be able to suggest the best possible way for us to manage cases which have already been investigated in the past, such as your own case.*

*Would this solution be satisfactory to you in the short term. Are you sure that counselling would not be helpful at this stage.*

*Meantime, in response to your request the relevant information about Tribunals under the 'Canon's and Constitution of the Anglican Church' is enclosed.*

*I draw your attention to page 2, 3 (1a) "Person to Whom This Canon Applies" and page 3 part 2 – "Charges". Section 5 (2) and Section 6 (2)(c).*

*Regrettably these seem to preclude your being able to bring such a charge in your present circumstances. I am concerned that this is the case and have initiated revision of these restrictions. The other options previously identified are open to you. I enclose a copy of the Tribunal Canon.*

*The Tribunal Canon relevantly provides that:*

*"An accused' means a person to whom this Canon applies against whom the charge is made.*

*'Accuser' means a person who makes a charge and where a charge is made by more than one person 'the accuser' means 'each of the accusers'.*

*'Offence' means any of the following:*

- (a) Breach of faith, ritual, ceremonial or discipline.*
- (b) Unchastity.*
- (c) Drunkenness.*
- (d) Habitual or willful neglect of ministerial duty after written (inaudible) in respect thereof by the Archbishop.*
- (e) Willful failure to pay just debts.*
- (f) Conduct disgraceful in a member of the clergy and productive or likely to be productive of scandal or evil report.*
- (g) Absence of any license member of the clergy from that person's curate, parish or office without leaving in writing of the Archbishop.*
- (h) Willful contravention or violation of the provisions of the Constitution Canons rules or regulations of the Synod.*

*'Person to whom this Canon applies' means a person licensed by the Archbishop or any other person in Holy Orders resident in the diocese.*

*4.1 (a) A charge that a person has committed an offence may be made as provided by this Canon against any person to whom this Canon applies.*

*Clause 5 (2) then provided:*

*'Subject to sub Section (1) of this Section no charges of an offence as being committed may be made more than two years after that offence has been committed.'*

*It is provided that a charge other than breach of faith, ritual or ceremonial may be made, inter alia, 'by any other adult, communicate member of the church resident within the diocese'.*

19.6 Clause 5(2) has now been repealed, and there is no barrier so far as time is concerned but that is not the end of the matter. Without determining the issue, it seems to the Board that there are grave doubts as to the jurisdiction of the CCSA to hear a complaint, or the Tribunal a charge, in respect of conduct which did not occur in the Brisbane Diocese. Given that to be the case, remedies for the Complainant may not be available in Brisbane Diocese. It can be added that the Complainant prior to the recent submissions of Dr Hollingworth has stated that both personally, and through a solicitor she has sought redress from the Diocese of Bathurst, but despite numerous letters and phone calls has received no response. This is borne out by what now appears in para 15.11 to 15.23.

## **Conclusion**

20.1 The Board finds that the subject complaint was not handled fairly, reasonably and appropriately, in that there was and remains a failure on the part of the Respondent to make a full and unconditional apology for his conduct towards

the Complainant, namely his seduction of the Complainant at Forbes, her dismissal on spurious grounds from the Forbes Hostel, the premature termination of her secondary education, the lost opportunity for tertiary education, his subsequent adulterous relationships with the Complainant, accompanied by promises (ultimately repudiated) that he would live permanently with her, and the consequent hurt and distress over many years.

20.2 In that context it is noted that in their responses on behalf of Dr Hollingworth, his solicitors write,

*“Certainly, if Mr Shearman did what the Complainant alleges, an apology from him would be warranted. Further, based on Dr Hollingworth’s understanding of what has been admitted by Mr Shearman in his discussions with Dr Hollingworth, Dr Hollingworth would regard an apology as warranted.”*

20.3 With respect to the Diocesan officials, and Dr Hollingworth, the Board considers the efforts to resolve the dispute by mediation were appropriate and reasonable. However, the mediation failed, and the Complainant was told that nothing more could be done. Accepting that this may be so because of jurisdictional problems, the Board considers that, whilst recognising the stated inability of Dr Hollingworth to apologise on behalf of other Dioceses, this should not have precluded him from conveying to the Complainant that he utterly disapproved of the Respondent’s conduct, and that she was entitled to an apology from the latter. The letters of 15 February 1996 and 10 April 2001 contain no such message, but rather imply that the Complainant was acting unreasonably, in not treating the matter at an end because of the failure of the mediation. The Board considers that this was inappropriate, and unfair to the Complainant.

Dated the twenty-second day of April, 2003

.....  
Peter O'Callaghan Q.C.  
Chairman

.....  
Professor Freda Briggs  
Member

# BOARD OF ENQUIRY

into past handling of Complaints  
of sexual abuse in the Anglican  
Diocese of Brisbane

## Report

The Complainant  
v.  
Ross McAuley (Respondent)

### Complaint No. 4

#### The Complaint

1.1 The subject complaint was in a letter of 8 July 1997 and addressed to 'Whom It May Concern'.

1.2 The letter read:

*"I am writing this letter as part of a formal complaint process regarding the behaviour of Father Ross McAuley, currently Precentor of St John's Cathedral, Brisbane. This document describes behaviour which in my opinion constitutes at best a serious case of sexual harassment and an abuse of his position.*

*My first encounter with Father McAuley occurred within a few months of him taking the position in Brisbane (early 1995), when I volunteered to help him with a problem on his computer after a Sunday service. I was at that time a regular member of the cathedral choir, and was therefore often around the cathedral both on Fridays for rehearsals, and on Sundays for the two sung services. After the problem had been solved, he asked if I would like to come up to his apartment for a drink, which I accepted. We seemed to get on well on that occasion, and he asked if I would like to go somewhere on Monday (Mondays being his free day). I suggested that we go somewhere local as he was new to Brisbane so we went to Noosa for a day trip. He talked on this occasion (and later as well), on spiritual matters, and I*



*began to develop a great respect for him as both a priest and a person.*

*He seemed very keen to arrange similar trips in the future, and would invite me to his apartment on a regular basis. On one such occasion, possibly the third or fourth time that we had met, he embraced me on entering the apartment, and I found it necessary to ask him later that evening whether he was gay. He gave a somewhat ambiguous answer on that occasion, proposing a 'spectrum' of sexuality over which he felt that everyone was situated. He asked me on that occasion whether I was gay, and I told him that I was not. He also asked whether I had a problem being friends with him, given his answer, and I said that I did not. This hugging became a regular occurrence on meeting, and I recall on one early occasion not responding warmly to his embrace because I felt uncomfortable, which then prompted him to attack me verbally, claiming that his best friends did not treat him in this manner, and that he embraced both male and female friends this way. I felt guilty in denying him a hug, and allowed this to occur in the future.*

*The hug that he gave me on meeting soon gave way to him kissing me on the cheek as well, which made me feel even more uncomfortable. He then began asking me to kiss him back, which I refused to do. On a couple of occasions, he indicated to me that he thought that our friendship was 'ordained by God', by saying that we would not have met if God had not intended us to. I still respected him a lot at this stage, particularly when he would share his spirituality and experiences of Christianity with me.*

*The activities on a Monday soon became an expectation on his part that we should spend Mondays together, which I did not always desire. He also expected me to come up to his apartment on a regular basis, particularly on Sunday nights after evensong, when he claimed that he was exhausted, and wanted to be around someone, and on a couple of occasions asked whether I would sleep-over, which I refused. He also began to expect that I would call him frequently, and would try to make me feel guilty by claiming that friendship was very much a two-way arrangement, and that I was not fulfilling my part. He also began using other names when addressing me, particularly, 'Sweet-heart' or abbreviated 'SH', which made me feel particularly uncomfortable. I asked him on several occasions not to call me this, and he would continue, claiming that I had some sort of 'hang-up', and that he used nick-names for all of his close friends, and that they didn't mind.*

*On a couple of occasions, he asked me whether I would "Sleep with him". I refused, but on one occasion he lay down beside me on the sofa, with his arms around me. He claimed that this was not much to ask for in return, when he had offered so much to me in terms of friendship. I shudder when thinking of this episode in particular, and the way that I was manipulated by him. There were many other occasions on which he invaded my personal space by trying to hug or kiss me.*

*He also tried to discuss sexually explicit matters with me, although I would try to avoid such discussions. He would talk about sexual partners and masturbating in particular, and would quiz me on similar matters.*

*He would also say things in sermons that were directed to me, especially at times when he was angry with me or frustrated that I was not more eager to see him. Although these experiences are by their nature subjective, it has also become apparent to me that others have independently had similar experiences. This issue concerns me, as I feel that it is a substantial abuse of the role of a sermon.*

*In late 1995, I recommended to a good friend of mine, ....., who was having some personal problems that he wanted to talk to someone about, that he saw Father Ross for some counselling. I held the opinion that he would be good at working through the problems, and it seemed that this was the case as the counselling began. Later on (towards the end of June 1996), Father Ross invited him to move in with him, and they agreed to terminate the counselling sessions. Father Ross invited him to treat the place as his own, but it soon became apparent that there were restrictions imposed. At the time I was feeling increasingly uncomfortable around him, and had tried to suggest to him that our friendship was not really working out. He made me feel guilty by saying that he had put such a lot of effort into it, and that I was rejecting this great gift of friendship. I also tried to tell him that I felt that I could not talk to a priest about many issues, as he (Father Ross) was concerned about the confidentiality of the things that he had discussed with me. He claimed that he could act as both a priest and a friend to me, and said that he hadn't had a problem with his other friends. Father Ross was at that time upset that I was not keen to spend as much time with him as he would have liked, and in particular, that I would not often invite him to my current residence where I lived with my parents. He told me that I was not to visit ..... in his new abode, unless he (Father Ross) explicitly asked me. It*

*became apparent that this restriction did not apply to others, such as Matthew's girlfriend and his family.*

*There were many occasions on which I felt that my personal life and that of my friends was invaded by Father Ross. On one occasion he came up to a group of some female friends and myself during an intermission of a concert at St Johns, and asked how my girlfriend was. Not only did I not have a girlfriend at that time, but I didn't know anyone by that name either. This seemed to me to be strange enough, but one of the friends in the group came up to me after the concert, saying that Father Ross had seen her separately and said that he was mistaken, and that he was thinking of my previous girlfriend called ....., a name which was as puzzling to me as (the other). She also said that Father Ross was trying to 'extract information' about me. On another occasion (early January 1997), I was taking a holiday at Lake ..... at a holiday house of some friends, when the neighbours (who sometimes act as 'agents' for the house) said that they received a strange call from Father Ross who wanted to know what my plans were, if there were any of my friends coming with me, and when they were arriving and leaving. He did not say who he was, but the neighbours said that they knew his voice because they had met him previously during a choir camp at the lake. I later raised this incident with him, and he claimed that he was also planning a trip up to the lake and wanted to know if anyone was there so he could arrange his trip. This explanation did not convince me, as he was to leave on a trip to Melbourne the following day, and he denied asking about the movements of my friends. He also made it apparent to me that he expected to be invited there by me.*

*By the start of the new year, I felt that our friendship had completely broken-down, and that I would be best to acknowledge Father Ross politely around the cathedral, but to avoid personal encounters. Even this turned out to be hard to do, as he engaged me in conversation before or after services, or after rehearsals. This happened on the last Friday rehearsal that I attended (February 7, 1997) when he asked if I would like to go for coffee, or to see a movie sometime. I said that I would not be available in the future, after which we had an extended conversation, in which I told him that I felt uncomfortable around him, and that I thought that he had some problems that he needed to work out. As the conversation progressed, and he got more irate, I said 'Goodbye' to him and walked off towards my car. He kept talking, and followed me up to my car. I asked him go away and he kept following me. I asked him again to go away, and he responded by saying, 'I don't think it will be me who will*

*be going away from the cathedral choir!' I ignored this threat, and kept walking towards my car, when he became more abusive, and told me that I was 'walking in a camp manner', and accused me of being gay. I got into my car and slammed the door. He said 'You're angry, (the Complainant) aren't you? Would you like to punch me?', at which point I said that I was angry, and drove off. I attended the service for the last time that Sunday, as I felt that I could no longer worship in that environment. It was not the first occasion that a threat like that had been made. He had on other occasions told me that he 'wouldn't stand in my way of leaving the choir' if we didn't 'sort things out', or that 'it would be very difficult for me to stay in the choir'.*

*After that event, I no longer attended any services of worship at St Johns, and avoided all contact with Father Ross. (My friend) moved out shortly afterwards (March 1997), during which time he told me another couple of stories which disturbed me. One related to the attempts of Father Ross to discredit me by telling him at one stage words to the effect of 'You know (the Complainant) is on drugs, don't you', and that I was 'mixed-up', and it was for that reason (the drugs) that I didn't ever drink. This disturbed me greatly for several reasons. Firstly, I had confided in Father Ross early on that I had been depressed at one stage (after starting up my own business and quitting full-time employment), and that my GP had put me on some medication for this for a short time. This seemed to me to be a breach of the confidence that existed between us. Secondly, the assumption by him that a mild depression equated to being 'mixed-up', and thirdly that he knew that I never drank, and that I had never drank since at least starting University. He knew this because he had on several occasions offered me drinks while in his apartment, and I had declined. I had explicitly told him that I never drank, because I didn't like the taste of alcoholic drinks. It has come to my attention that this is not the only occasion that he has tried to discredit me by saying things to others.*

*The events described above form a picture of behaviour that I consider to be both a blatant abuse of the position of an ordained member of the church, and a clear case of sexual harassment. In particular, the unwanted physical and verbal approaches, sexual innuendo, name-calling, threats, attempts to discredit me, intrusions into my personal life, abuse of his position, and his manipulative actions have caused me great hurt and concern. I am also sad that I had to leave the church in which I was actively involved for a number of years, and where I first became a Christian.*

*I am making this complaint for three reasons. Firstly, I feel that I could not leave St John's without saying something of the reasons I had for leaving. Secondly, I am worried about others in that environment being vulnerable to his approaches. Finally, I hope that Father Ross will some day come to an understanding of his actions, and will take responsibility for them.*

*I certify that this is a true record of events."*

## **11 July 1997**

- 2.1 Bishop Williams, the Bishop for the Southern Region, having received the written complaint, forwarded it on to Ms Marilyn Redlich, the Chairperson of the Committee for Complaints of Sexual Abuse stating:

*"I entrust the document now to you for retention, I advise that for convenience I have copied the complaint to the Archbishop today and I have retained a copy in our confidential file. I have made no other copies of this complaint."*

- 2.2 The Chairperson advised the diocesan insurer of a complaint of sexual abuse made against a church official stating:

*"Repeated occurrence of unwanted hugs/kisses/names and other verbal harassment. Pressure to visit/telephone more frequently. Overly intimate conversation and requests for sexual activity despite verbal rebuff. ("No" etc) by Complainant. Respondent: adult male pastor, Complainant: adult male congregant member."*

- 2.3 On 14 July 1997 Ms Redlich advised the Archbishop:

*"I have received a complaint of sexual abuse by a church official from one of our contact persons on behalf of the Complainant. The Complainant is an Anglican and was until recently a lay clerk in St John's Cathedral choir. The Respondent is an ordained person working in the Brisbane diocese. The complaint has been validly prepared and presented, in accordance with the formal requirements of the Protocol. I enclose a copy for your confidential records.*

*As Chairperson, I now have three immediate duties:*

- To inform you of the complaint.
- To inform the Respondent.
- To ensure the appointment of a support person to both the Complainant and the Respondent at the earliest opportunity.”

### **17 July, 1997**

3.1 Ms Redlich informed the Respondent that a complaint had been made against him and stated:

*“In addition to notifying you, I have also today notified the Archbishop. It is also my duty now to ensure the appointment to yourself and to the Complainant of support people. I will contact you about this at the earliest possible time. In the meantime please feel free to telephone me if you need further information.*

*In the circumstances I am sure you will understand that it will be necessary for me to recommend to the Archbishop that he asks you to stand aside from your position as a committee member of the CCSA. Alternatively, you may choose to stand aside in the interim until these matters are resolved and a further decision can be taken.”*

3.2 On the same day Ms Redlich acknowledged to the Complainant the receipt of the complaint and advised of the appointment of a support person.

### **23 July 1997**

4.1 On 23<sup>rd</sup> July Ms Redlich wrote to the Respondent stating. inter alia:

*“Through your support person, I would now like to advise you of some of the requirements of the Protocol. As you are aware, you have a right of access to the Protocol. You are encouraged to read this document thoroughly; noting especially Section 3 (b) ‘your legal right to silence et al’. In addition you may also have other rights in law in this situation. Should you wish to have more information about your rights in law, we suggest that it may be advisable for you to consult a Solicitor.*

*Section 8 (b)(i) requires me to inform you and the Complainant that notwithstanding any resolution arrived at between the parties, the Church may not necessarily be satisfied with this and may consider taking further action in the matter . . .”*

(A copy of that letter was also forwarded to the Respondent’s support person.)

- 4.2 An identical procedure was followed in relation to the Complainant and a copy of the letter forwarded to his support person, .....

#### **24 July 1997**

- 5.1 Ms Redlich wrote to the Archbishop requesting that the Respondent’s appointment to membership of the CCSA be suspended and also made some recommendations with respect to limiting the range of the Respondent’s pastoral duties. She said:

*“However I am concerned about the lack of judgment this person has shown in the recent past and the somewhat ‘out of control’ aspect of some of his behaviour. (The behaviour I refer to is not that outlined in the complaint, which awaits proper investigation and proof or disproof). In these circumstances the Anglican community has a duty to its other members as well, until a fuller investigation can be made.”*

- 5.2 She then recommended in lieu of Mr Tony Graham the appointment of Mr Bill Youatt-Pine as investigator. These recommendations were approved by the Archbishop though not the recommendations in relation to curtailment of his pastoral duties.

**29 July 1997**

- 6.1 The Respondent consented to participate in the steps of the Protocol pursuant to Section 8 (c) (ii) of the Protocol.

**4 August 1997**

- 6.2 A similar letter was received from the Complainant.

**6 August 1997**

- 6.3 The Respondent advised the Archbishop:

*“Following our conversation I agree to stand down from the diocesan protocol committee for the time being.*

*I will be happy to serve on it again and believe I will have considerable insights to bring to the work of the committee in the future.”*

**19 August 1997**

- 7.1 R.J. Clutterbuck, Barrister, wrote to Ms Redlich stating:

*“I have to advise, as a consequence of our discussions recently, that on the 9<sup>th</sup> day of August 1997 at 5.10 p.m. I commenced interviewing the Respondent in respect of allegations of serious sexual misconduct and harassment. A copy of the report from the Complainant was utilised for the purpose of questioning the Respondent . . . and, he had with him his support person, another whom, the committee knows.” . . .*

It is assumed that Mr Clutterbuck was appointed by the committee to provide a report for the purposes of mediation.

He concluded his ten page report stating:

*“Should this matter progress to mediation then it is my view that a number of matters ought to be addressed. They are:*



(There are then set out seven points appearing to raise issues for discussion.)

7.2 He concluded:

*"I have put these views that I have arrived at after having interviewed the Respondent. In fairness to the Respondent, there are some particulars that ought to be discussed with the Complainant and the Respondent has indicated his preparedness to participate in another interview once further particulars have been obtained. This preliminary report, although almost complete in nature is duly tendered to the committee for its consideration and assistance in mediation. The Respondent has indicated his preparedness to mediate however, the success of the mediation may depend entirely upon the acceptance by the Respondent that he has transgressed the boundaries that exist between one in his position and his parishioner, or a member of his "congregation". In my view it would be necessary for the Respondent to understand this if the mediation is to be successful. Otherwise, I consider that a mediation without acceptance of this feature by the Respondent would be meaningless save and except to have the Respondent apologise to the Complainant on a veneered basis but still, accepting, that what he did was not wrong and, more alarmingly, an accepted practice within the Church."*

## **5 September 1997**

8.1 Dr Hollingworth wrote to Ms Redlich criticising the delay which has occurred and referring to some aspects of the process itself which clearly need closer examination. He wrote, inter alia:

*"A fundamental concern is that with a committee now formally and officially in place, people with all manner of complaints, some serious and some trivial, may be encouraged to make a formal approach to the committee for a hearing whereas some such matters may better be resolved from a pastoral aspect less "officially". But apart from that important consideration, if the protocol is to work fairly, then it must act promptly and quickly, because the potential level of personal and pastoral damage is very great indeed.*

*In this instance, the priest concerned is barely able to maintain his important responsibilities and several people who are already aware of what has happened have expressed their grave concern to me that an accusation made on 8 July is still no further towards resolution almost two months later.*

*The particular matter was drawn to my attention well before any form of proceedings occurred as the Complainant came and sought counselling from me then at considerable length and I was advised that there was no need to take further action because he had no intention of doing anything other than expressing his distress and indicating that he had a problem which prompted him to leave the congregation.*

*Both the Dean and I are now left wondering why there has been a change of heart on the part of the Complainant in deciding to lodge a formal complaint. The nature of the complaint is one of a carefully prepared, indeed quite professional letter and one is naturally moved to ask whether these were his words or whether the letter was prepared for him. That is one of the questions that the Dean has raised with me. Justice must be done and be seen to be done and a great potential problem associated with the present protocol is where one person without witnesses lodges a complaint against someone else, also without witnesses, and it becomes one person's word against another. . . As Archbishop I am now in a position where I cannot allow the matter to drag on and I must therefore ask for a written report at the earliest possible opportunity. I would prefer to avoid the option of withdrawing the matter from the committee although I clearly have the pastoral authority to do so.*

*It has been my view from the outset that this is not an issue involving any criminal charges, but rather, as you have said yourself, to do with allegedly inappropriate pastoral behaviour, raising the serious questions whether it should be dealt with by a committee of lay people or left to my responsibility as his Ordinary to counsel forewarn and admonish*

*There is an urgent need for prompt resolution of this matter and it is the delay and its most adverse consequences which precipitate my request now for a report, and assurance that that prompt resolution will be achieved.*

*Could you please thank the committee for the work they have done to this point. We are clearly going through uncharted waters and beginning to learn of some of the difficulties involved in this very painful process."*

**9 September 1997**

- 8.2 Ms Redlich replied in detail to the criticisms contained in Dr Hollingworth's letter. She corrected the date which it was asserted the complaint was received and pointed out that it was received on 14 July. With respect to the time delay she explained and defended the committee's position.
- 8.3 It should be added that as will appear from subsequent responses of Dr Hollingworth he withdrew his criticisms of the time delay because he had not appreciated what had in fact occurred. He was unaware for instance of the investigation and report by Mr Clutterbuck.
- 8.4 Dealing with the change of heart by the Complainant as referred to by Dr Hollingworth:
- "You have raised this question previously and so I decided to ask the Complainant the same question on your behalf. He advises three influences. One, after he had had the meeting with the Dean he later had a conversation with his friend 'X', who for the first time, reported the Respondent as having said to 'X' "He's very mixed up, he's on drugs". "*
- 8.5 Ms Redlich refers also to other reasons why he decided to make a complaint, including that he was concerned about the threat to other young men.

8.6 This and the letter under reply reflected the tension existing in regard to this “maiden voyage” of the committee epitomised by the conclusion of the letter:

*“We hope that you will develop confidence and trust in our ability to be of real assistance to you in . . . managing these demanding matters.”*

### **9 September 1997**

9.1 Mr Clutterbuck reported on his interview with the Complainant which is also presumed was made to assist in the mediation. In the summary he said:

*“Bill (Youatt Pine) and I have discussed this matter at length, particularly after the interview with the Complainant. We are both of the view, having called on our own experiences (Bill’s vast experience in probation and parole and mine in prosecuting and defending sexual related matters) Ross was ‘grooming’ the Complainant. The Complainant has been emotionally shattered by this experience and in my view (and Bill also shares this view) requires counselling. It may well be the case that the Respondent also requires some substantial counselling **without making a judgment of the case as a whole**. The Complainant appears to be a particularly plausible, honest and forthright person whose truth and veracity I do not doubt.” (Emphasis supplied)*

### **11 September 1997 and 17 September 1997**

9.2 The Summary implies the tentative nature of the reports, designed to identify the points of dispute, so to better allow the progress of the mediation, rather than a judgment following a hearing, consequent upon a failed mediation. In this complaint as will appear hereafter, the Complainant and the Respondent signed off on a Mediation Agreement.

**11 September 1997**

10. Mr Youatt-Pine wrote to Ms Redlich stating:

*"I feel constrained to write to you because I feel very embarrassed about the time it has taken to progress with the investigation of the complaint of the Complainant against McAuley.*

*I realise that there has been an inordinate delay, partly because of my illness, but partly also because the production of a report on our interview with the complainant took far longer than I expected. I had assumed that the report had been sent to you well in advance of the date on which you actually received it. I regret that I did not confirm that the report had been sent in good time. I apologise for not having done so. I hope you will convey to the Archbishop my sincere regret for the annoyance this delay has caused him.*

*In relation to the case as a whole, I feel confident that, (if the Committee feels it is proper to do so), I can offer some assistance to the respondent in terms of looking at his behaviour to see if it was inappropriate in the circumstances, as well as offering him some strategies whereby he can guard against such a situation arising in the future.*

*I also believe that some form of counselling should be offered to the Complainant, since it was clear to me when I interviewed him that he was profoundly affected by what had happened to him. Obviously, it is not sufficient in a matter like this to offer help to the one party whilst ignoring the needs of the other. It would not be appropriate for me to deal with both the respondent and the complainant, so I suggest that a way be found to provide the Complainant with the counselling he may need.*

*I suggest that in future the interviews which have to be carried out in relation to investigations should take place in some kind of neutral venue in order to secure a proper degree of impartiality, and that a desirable time-frame be stated for the completion of the investigation.*

*I look forward to being able to assist you and your Committee in the future and I would like to assure you that any reports which I write will be sent to you with the minimum delay."*

## 17 September 1997

11.1 There is a written report of a conversation between Bill Youatt-Pine and another person whom the Board will not identify. Briefly stated that person who was a member of the choir referred to his own experiences with the Respondent, presumably to support the Complainant's case.

11.2 It is not easy to see how such information was to be used by the Committee unless it embarked on a hearing. There does not appear to be any evidence that it was put to the Respondent, or his views sought thereon.

12.1 On the same date Ms Redlich wrote to Dr Hollingworth stating:

*"I am pleased to be able to report that a mediation conference between the parties to the first complaint has been organised for tomorrow (Thursday) afternoon at 2.00 p.m.*

*There will be two mediators, (Committee members), plus the parties and their support persons. All parties have agreed to attend. On the receipt of the mediator's report, the Committee will meet to draw up its recommendations which will then be forwarded to you for your consideration and action."*

12.2 Ms Redlich sent to James White, Solicitor, the investigator's report which presumably was the report referred to in paragraph 9.1 above.

## 18<sup>th</sup> September 1997

13.1 The Mediation took place and James White reported to the Committee as set out. This report was obviously made on or after 26 September.

*"REPORT TO CCSA COMMITTEE*

*Re: Mediation between Rev. Canon Ross McAuley and the Complainant*

*Arrangements were made with the parties to convene a mediation at 2.00 p.m. on 18 September, 1997. Jim White spoke to both parties to ensure that they both agreed to the mediation and also to explain the mediation process. The Complainant requested that the mediation not be a face to face meeting and Ross agreed to proceed on that basis. Both agreed and arrangements were made for the Complainant to arrive about 20 minutes prior to the commencement so that he did not meet Ross.*

*The mediators met at 12 noon to prepare for the mediation and formulated the following process:*

*Introduction:*

*Explain Protocol Steps*

*Explain Mediators' Role*

*Explain Purpose*

*Reach an understanding about the matter between the parties.*

*Give the parties an opportunity to express how they feel about the matter.*

*Provide an opportunity of the way they would like the Church to deal with it.*

*Check parties have come voluntary*

*Obtain agreement on confidentiality*

*Subject to Protocol.*

*Mediators maybe involved in discussions with the committee when making any recommendation to the Archbishop but mediators will not reveal anything, which is said during discussions unless parties agree. The mediators also agreed to strict confidentiality in respect to what was said during the mediation however both parties were aware that the mediators would also have some input into the recommendations.*

*Check time*

*Explain agreements*

*Could be a joint statement*

### *Future*

There doesn't have to be a hearing unless one party wants one.

This could be covered in the agreement (read out the Protocol).

The agreement may provide an opportunity of presenting a submission to the committee. The committee will make recommendations to the Archbishop even if there is not a hearing.

### *Process:*

*The mediators would shuttle between the parties who would be in separate rooms.*

*The mediators would obtain an opening statement from the parties and then read the statements/summaries back and then inform each party of other's positions. The Mediators would then establish a list of agenda issues. The parties through the mediators would then discuss these issues.*

*As the mediators talked directly to the parties in private, the mediators would inform the parties to tell the mediators if anything was strictly confidential and which would not be disclosed to the other party.*

*After a full discussion of the list of issues then an agreement or joint statement could be prepared.*

### *The Mediation:*

*The mediation in general went extremely well despite the "shuttle" which slowed the process down enormously. The agenda consisted of the following:*

1. *The effect of the complaint and the allegations on both parties*
2. *The facts/allegations*
3. *Future*

*It was decided not to discuss all of the allegations in full but to select only one or two of the allegations. This provided the parties the opportunity to express their perception of the events.*

*The parties were able to agree on the whether the events took place however there was disagreement on whether certain things were sexual abuse and whether there was a pastoral relationship.*



*In any event both parties were left with no misapprehension of the others point of view.*

*The most effective part of the mediation was the agreement in writing as there appeared to be a break through on coming to terms with what both parties wanted to see happen in relation to the future conduct of the dispute.*

*Although they were not able to agree on some things, both appeared to be satisfied with the agreement and the progress, which had been made.*

*The agreement was typed up and handed to both parties. A copy of the agreement is attached to this report for the committee's information. As is set out in the Protocol, both parties had seven days to consider the agreement.*

*The mediation took nine hours, which included preparation time.*

*The mediators undertook to notify the parties when the Committee was delivering its report to the Archbishop.*

#### *After Mediation*

*On Monday, 22 September 1997 Ross came to James White's office and handed to him an amendment to Clause 15 of the Mediation Agreement, which he wanted, made. James explained that the Complainant had to agree to any amendments. James later that day spoke to him and later faxed a copy of the amendment to him for his consideration. The Complainant indicated that he would advise James of his position in relation to the amendments.*

*The Complainant did not respond to Ross's amendments and later during the week of 22 September, 1977 we had a discussion with Marilyn Redlich, Chair of the CCSA. She indicated that she had received a letter from the Complainant on Wednesday, 24 September, 1997 which involved certain further allegations about the conduct of Ross. The letter also indicated that the Complainant wanted to withdraw from the mediation process.*

*On Friday, 26 September 1997 Owen, Marilyn and James met to discuss the best course of action in relation to the mediation. Marilyn decided that the Protocol should be suspended until the allegations raised in the Complainant's letter of 22 September, 1997 were reported to the Archbishop and considered what course of action to take.*

*On Friday, 26 September 1997 James telephoned the Complainant and Ross and advised that the Protocol had been suspended until*

*further notice whilst the Archbishop considered the information that Marilyn had received. Ross was not informed of the Complainant's letter. James advised that the mediation process had not been concluded and both parties would be informed when and if the Protocol recommenced. The only aspect of the mediation having not been concluded involved the negotiation of the amendments Clause 15 of the Mediation Agreement.*

*The Complainant indicated during his discussions with James that he was hesitant to be further involved in any future mediation and that his letter was sent to give the Church an opportunity to do something about his further allegations. He said if the matters raised in his letter were not resolved then "it would become a legal matter".*

*Ross who has no idea why the Protocol had been suspended was very curious and concerned about his future. James indicated that the matter would be in the hands of the Archbishop and no doubt he would be informed very soon the outcome of the Archbishop's determination.*

Both parties consented to keep the content of the mediation confidential and to allow the CCSA to provide a copy of the Mediation Agreement to the Archbishop.

*Signed: James White*

P.S. Owen Strong was consulted during the preparation of this report, however he did not get the opportunity to read the final draft."

## **18 September 1997**

- 13.2 A Mediation Agreement between the Complainant and the Respondent was entered into, but it is not set out because of confidentiality.
- 13.3 The somewhat curious position which had been reached in which the parties had agreed about a number of matters, and recognised that there would not be a hearing, but were aware that CCSA would be making a report to the Archbishop and that he might take action.

## 29 September 1997

14.1 Ms Redlich wrote to Dr Hollingworth advising that the Complainant had raised an additional set of issues. These concerned a commercial dispute between the parties. The letter read:

*"I would like to confirm the content of the telephone conversation which we had last Friday 26 September concerning complaint no. 1. Last Wednesday 24<sup>th</sup> September, I received a letter (copy enclosed) from the Complainant advising me of a new set of issues between himself and the Respondent which he had not been aware of until 19<sup>th</sup> September – the day after the mediation. In the light of this new information, the mediators and I met to consider the situation.*

*The situation before the letter arriving on the 24<sup>th</sup> was that there had been a seven hour mediation on 18 September with parties separate. While the discussions were not easy some important goals were achieved. The parties had their first (safe) opportunity to meet and hear the others views since the complaint was made. Many important issues were canvassed and a 15 point provisional agreement was drawn up, with a seven day opportunity to revise. I enclose a copy of this. There was a developing sense of clarification and pro-dress. Unfortunately, the new information has clouded this result.*

*On Friday 26<sup>th</sup> I decided to suspend the progress of the complaint (under Section (a) (ii) of the Protocol) about the first set of issues until the second issue was more clearly resolved. This means that further work towards a final statement of agreement from the mediation will be "put on hold". In addition to suspension I also recommend that you take up the matter with the Respondent on the basis of your over arching pastoral authority. I will send out detailed recommendations to you in the next 48 hours on how we view the case and what we see as the best options for action from now on by the diocese. I would suggest that you may wish to take legal advice about the Diocese's position concerning the matter of the registered place of business.*

*I have advised the Complainant that these actions have been taken and that the committee suggests that he write directly to the Respondent stating the three demands of his letter of*

*22<sup>nd</sup>. He confirms he will do this. I have also written to the Respondent (on 30<sup>th</sup>) advising of the suspensions on the basis of new information and that you will be speaking to him as soon as possible.”*

### **30 September 1997**

14.2 As she had stated Ms Redlich wrote to the Complainant advising him to write directly to the Respondent and put your demands to him. She added:

*“I have also decided to suspend the process of the complaint so far, and therefore the further resolution of the mediation agreement until the second set of issues have been more clearly acted upon. I have informed the Archbishop of your letter and my decision, and he will now act on the basis of his pastoral authority with the Respondent.*

*I will also forward the committee’s general recommendations about the complaint to the Archbishop, probably tomorrow.*

In the meantime, would you kindly advise when you have written to the Respondent and the nature of any reply you might receive from him.”

### **30 September 1997**

14.3 Ms Redlich wrote to the Respondent advising him of the suspension and that:

*“I have advised the Archbishop of this and he will be speaking to you soon with more information.”*

### **1 October 1997**

15.1 In the meantime there was being prepared a report of the Committee to the Archbishop. David Axten who apparently prepared a draft wrote to Ms Redlich saying:

*“Sorry to be so late. There may be problems with making changes also with the meeting taking place next Monday ?”*

15.2 That draft was apparently contained in a letter Ms Redlich wrote to the Archbishop.

*“REPORT OF COMMITTEE FOR COMPLAINTS OF SEXUAL ABUSE ON CASE 1*

*1 October 1997*

*Dear Archbishop*

*Following the investigation and extensive mediation (with parties apart) in response to the first complaint, the CCSA wishes to note:”*

There is set out a series of findings and recommendations adverse to the Respondent. The Board does not propose to publish them because,

- (i) They could be defamatory.
- (ii) They were not findings made by the Committee after an adversarial hearing as contemplated by the protocol following a failed mediation. In this case as has been stated, there was a mediation agreement entered into, and which contemplated the making of a report by the Committee and the matter being dealt with by the Archbishop.
- (iii) It is presumed that they reflect the conclusions of the investigators appointed by the Committee.

- (iv) It is clear that the Report was not provided either to the Complainant or the Respondent and there is no evidence that the facts or circumstances upon which the Committee made its findings and recommendations were put by the Committee to the Respondent.
- (v) The Respondent has not responded to the documents provided to him by the Board though Reverend Stewart Solely and Dr Hurst have on his behalf criticised the way in which the Committee and Dr Hollingworth dealt with the complaint.
- (vi) The Board is able to make a finding without the necessity to refer to or publish the details of the Committee's recommendations.

### **23 October 1997**

15.3 The Complainant wrote to Ms Redlich stating, inter alia:

*"I am writing this letter to inform you that the issue of trade mark infringement against Father Ross McAuley has now been satisfactorily resolved. I am now in possession of both the disc containing my source code, and a letter from him stating that he has not carried out any work using the business name .....*"

15.4 There are then a number of references to the detail of the commercial dispute and the letter concludes:

*"In relation to our mediation agreement I understand that the intention is now to complete the agreement as soon as possible. With this being the case, I would like to address*

*the agreement as it stands. I have received the proposed amendment to item 15 and have noticed that Ross has withdrawn his request for me to avoid using the Cathedral premises. The “pre-amble” that he has supplied (beginning “as one dedicated to following in the footsteps of him who reconciled us . . .”) is both wording that I do not agree with, and which in my mind is of little use for the primary purpose of stating agreed points. If this part is removed then we appear to have a statement that says nothing so I would suggest that item 15 is removed altogether. I must also say that the statement seems to imply that Ross has the ability to restrict my access to the Cathedral property, and I would be both surprised and disturbed if this was the case.*

*I request that items 2 and 3 are reworded so as to indicate that the sentiments expressed are those stated by Ross, and not necessarily by myself.*

*I request that item 4 is removed, as this is an unrelated statement that cannot be verified by myself.*

*I also request that item 13 is changed to indicate that Ross is the one agreeing not to make any adverse comments about myself. I have never made any misleading or falsely damaging comments regarding Ross, but know that Ross has not returned this favour. I would therefore like it to be stated in this perspective.*

*I would like to take this opportunity to express a couple of the desired outcomes that I would like to see. Although I leave it to the Committee and Archbishop for the major outcomes to be decided, I would like to ask that included in the outcome is a request explicitly asking that Ross-*

- 1. Supply a written statement concerning any other comment that could possibly be construed adversely which he has made to any other parties regarding myself or my business ventures. ...*
- 2. Supply a written statement indicating that he will not make any comments concerning me or my business ventures to any parties in the future, of any nature, other than privately in formal counselling where required. . . .”*

(There was enclosed a draft letter from the Respondent’s Solicitors.)

**25 October 1997**

15.5 Ms Redlich wrote to the Respondent stating:

*"I have received your letter advising me of the fact that the Respondent has satisfactorily answered your demands regarding the new issues of dispute, he having deregistered the business name, returned the source code disc and confirmed that he has not carried out work using your business name. In light of this, I will lift the suspension of the protocol in the next couple of days and the parties may proceed with resolution of the mediation agreement.*

*I have taken careful note of your (most relevant) comments in para 2 and will convey them to the Archbishop with your consent.*

*Your views and preferences regarding aspects of the draft mediation agreement have been noted and I will forward these to the mediators.*

*With regard to your statement to clarify two additional desired outcomes, I will consider these carefully in consultation with the Committee. It may be best to include these as part of a finalising of the mediation."*

15.6 Ms Redlich also wrote to the Respondent stating:

*"The Complainant advised me yesterday that the issue of trademark infringement against yourself has now been satisfactorily resolved, . . . accordingly I will lift the suspension of the protocol in the next couple of days and the parties may proceed with resolution of the mediation agreement. I will telephone you as soon as this is official.*

*You will recall there is provision for a seven day period in which the mediation agreement may be varied.*

*As the Committee forwarded its recommendations regarding this complaint to the Archbishop on the 4<sup>th</sup> of October, the finalisation of the mediation is the last step in the Committee's part of the process. . . ."*

**4 November 1997**

16.1 Ms Redlich forwarded to James White:



*“The mediation sought documents as promised which appeared to be:*

- *Letter from the Complainant to Committee 23 October 1997*
- *Provisional mediation agreement 18 September 1997.”*

16.2 It will be seen that Ms Redlich states:

*“The finalisation of the mediation is the last step in the Committee’s part of the process.”*

There does not appear to have been a strict adherence to the terms of the protocol, though no criticism is made of that. There was the entry into the mediation agreement, which typically signals the success of the mediation and thus the closure of the dispute, avoiding the necessity for a hearing to determine the validity or otherwise of the complaint. In this case there was no hearing conducted by the Board, in which the competing claims were tried in an adversarial setting. The agreement did however contemplate a Report being provided to the Archbishop and that he could take action, including apparently the disposal of the complaint. (See para 18.1 below)

### **5 November 1997**

16.3 Dr Hollingworth wrote to the Respondent:

*“Further to our conversation this morning, I have now decided that the meeting scheduled for tomorrow at 1.00 p.m. should now be postponed. Having spoken with Marilyn Redlich, I now have a clearer understanding of where the process of mediation is at, and I believe that the only outcome of any meeting held tomorrow is likely to lead to discussion about the protocol and its perceived shortcomings. I do intend to have extensive discussions with the Committee and other people, including yourself, at an appropriate time, but this is a quite separate matter from the substantive issues raised in the official report that has come from the CCSA Committee which I must discuss with you. I*

*believe that it will be helpful to have Arthur present, just as I believe it will be helpful for you to have one person as your official support person in the situation.*

*Marilyn has assured me that she has spoken with (your support person) who is more than prepared to continue the process and to support you through it. I therefore suggest that you make contact with him again as soon as we establish a new time of meeting. With regard to your request to have (your solicitor) present, he must essentially be present as your legal representative and therefore that must be a separate meeting dealing with a different agenda. No good purpose will come out of confusing the two matters.*

*I have also sought to clarify with Marilyn your concern that under the protocol the Complainant under the protocol could continue to raise difficulties and objections, and so draw out the process indefinitely. She assured me that this is not the case and that all that has presently been dealt with is two separate factors. The first issue is to deal with the registration of the business name of ..... which caused him to ask for a suspension of the process. It was Marilyn herself who did that, not him, because she felt that the matter had to be resolved quite separately before the Complainant was prepared to sign the mediation agreement. He has, I understand, asked for some changes to the mediation agreement, which are not substantive but involve the withdrawal of clause 4 which he believes is your own statement describing your feelings, which he believes does not form a proper part of the mediation process. That is a matter that now has to be addressed and there are seven days in which that must happen, commencing, I believe from last Monday and which concludes next Monday night. As soon as these matters are resolved I will proceed to call a meeting originally scheduled for tomorrow. Like you I am equally concerned that this matter be addressed and resolved as quickly as possible.”*

## **6 November 1997**

16.4 Ms Redlich wrote to James White in terms which made clear that the mediation was either an ongoing process or indeed a fresh mediation. She wrote:

*“Regarding the mediation you are organising, would you kindly send me a letter advising me that you communicated*

*with the two parties and went about the reopening of discussions to finalise the mediation; and advising me of when the mediation discussions, if any, will be held; and when the seven day amendment period will end.*

*Many thanks indeed for all your time and care . . .”*

## **7 November 1997**

16.5 James White wrote to Ms Redlich:

*“ . . . All parties have agreed to participate in an ongoing mediation to discuss the amendments to the original mediation agreement dated 18 September 1997.*

*I hope to arrange the mediation at 2.00 p.m. on Monday 10 November 1997. I anticipated that the mediation would be conducted at my office with the Respondent and his support person at my office and the Complainant available by telephone. The Complainant has indicated that he probably doesn't need a support person. The Respondent has questioned whether my office was suitable. He would prefer the mediation to be in the city. I am having ongoing discussions with the Respondent about this matter.*

*All parties have agreed that the mediation will only be for a short period of time to specifically discuss proposed amendments and that there may not be a further opportunity to discuss the matters which were raised at the earlier mediation.*

*All parties are also aware that there will not be any further mediation after Monday.*

*I will report back to you once the mediation has been concluded.”*

## **Further Mediation Agreement**

17.1 A mediation agreement dated 10 November 1997 was signed by the Complainant and the Respondent, and forwarded to Ms Redlich by James White who wrote:

*“Please find enclosed mediation agreement which the Respondent and the Complainant entered into yesterday.*

*They are both aware that the Archbishop will now determine the matter and that the mediation is now concluded.*

*I will provide a full report of the mediation at the next committee meeting.*

*If you have any queries please do not hesitate contacting me.” (Emphasis supplied)*

- 17.2 The November mediation agreement between the Complainant and the Respondent was entered into and was substantially the same as the previous agreement. Its terms are not set out because they are confidential.

### **14 November 1997**

- 18.1 Ms Redlich wrote to Dr Hollingworth:

*“I enclose a copy of the second page of the Complainant’s letter of 23 October in which he specifies the two requests he would like us to make to Ross.*

2. *For all those who are closely involved in managing the first complaint, I have called a debriefing meeting on Monday 24 November from 5.00 – 8.00 p.m. at my office 1<sup>st</sup> Floor, 70 Grey Street, South Brisbane. You are most welcome to attend (even if you can give only limited time) if you would see this as a suitable opportunity. I have asked David Axten to facilitate the debriefing because of his experience and as one of our CCSA members. I have also invited the contact person, support persons, and Bill Youatt-Pine. Would you kindly advise if you are able to attend. . . .”*

### **3 December 1997**

- 18.2 The Respondent wrote to Dr Hollingworth stating, inter alia:



*to the CCSA) having spoken both with the Complainant and the Respondent. The Complainant does not intend to take his complaints any further and I have informed him that the substance of those complaints has been addressed with the Respondent. A number of recommendations were made to me regarding the Respondent, and I have judged that some of them, such as a move to another position, are impractical at this time. The recommendation that a professional assessment of risk from a clinical psychologist was strongly resisted by the Respondent on the advice of his psychiatrist. As he is continuing under treatment in this respect, I have judged that this will have to be sufficient in the circumstances.*

*I have warned the Respondent that in future he must take great care to avoid being implicated in situations which may be misinterpreted by others and thereby put himself and his professional reputation at risk.”*

19.2 As appears from the responses set out below, criticism is directed to Dr Hollingworth for having failed to give effect to the report of the Committee. Ms Redlich has provided criticisms to the Board and Mr Axten as reported in the media, that the Archbishop ignored the recommendations of the Committee. On the other hand, Dr Hollingworth says that he took them into account, and having done so made the decision which he did, namely to take no further action but as was foreshadowed in his discussions with the Complainant, the Respondent would be leaving his post as Precentor in any event.

19.3 Before going to the responses, and submissions which have been made by interested persons, consequent upon the draft preliminary findings, reference is made to subsequent events. These are the giving of a general reference to the Respondent at his request, and

a later letter to Monsignor Phillip Green in relation to the Respondent's intention to take up a position within the Catholic Church in Tasmania. In strictness the giving of a reference is not part of the handling of the complaint. Ms Redlich's criticism of some of the contents of that reference, seems based upon the contention that Dr Hollingworth has misinterpreted what the Committee did and decided. Given (without deciding) this to be the case, nonetheless the giving of a reference two years after the conclusion of the handling of the complaint is by definition not part of the handling of the complaint.

19.4 Dr Hollingworth was not bound to accept the recommendations of the Committee. In the responses made by his Solicitors on his behalf, he deals in some detail with the recommendations, and why he chose not to implement them as stated.

20.1 In a memorandum he wrote in 1998 he said:

*"A number of recommendations were made to me regarding the Respondent and I have judged that some of them, such as a move to another position are impractical at this time. The recommendation that a professional assessment of risk from a clinical psychologist was strongly resisted by the Respondent on the advice of his psychiatrist."*

20.2 The letter makes it clear that Dr Hollingworth having "formally closed the case" had taken account of the Committee's recommendations in judging how the matter would be disposed of. It was contended in the media that Dr Hollingworth ignored the recommendations of the Committee. Dr

Hollingworth's letter makes it clear that whilst he did not follow the recommendations, he had not ignored them. In responses made on his behalf by his Solicitors, Dr Hollingworth's reasons for not following the recommendations are set out in detail, but are not set out here, because to do so would reveal the findings and the recommendations of the Committee which, for the reasons previously stated, the Board does not wish to do.

20.3 In the first response from Dr Hollingworth's Solicitors, it was written,

*“As is apparent from the documents available to the Board, the Complainant's complaints against Mr McAuley were the subject of extensive and detailed examination. In these circumstances, and subject to any specific queries the Board may have, Dr Hollingworth makes only the following general observations at this stage.*

*This was the first complaint referred to the then newly formed Committee for Complaints of Sexual Abuse. For this reason, and as evidenced by the exchange of correspondence between Ms Redlich and Mr Yorke, all involved in the handling of the complaint through the committee mechanism were to some extent operating in untested waters.*

*Because the primary responsibility for complaint investigation lay with the Committee, Dr Hollingworth was personally unaware of the detailed steps being taken by the Committee. For example, until he received the papers provided by the Board he was not previously aware of the report commissioned from Mr Clutterbuck, or of the content of it.*

*It is against this background that Dr Hollingworth's expression of concern about the time being taken by the Committee in resolution of the complaint should be seen. Having now had*



*access to the papers provided by the Board, Dr Hollingworth would retract his original view that there had been “inordinate delay” in the Committee process. It is now apparent that the illness of one committee member and the second complaint in relation to the Complainant’s business name registration unavoidably extended the time necessary to deal with the principal complaint of sexual abuse.*

*It is appropriate to comment on the various recommendations made to Dr Hollingworth by Ms Redlich as Chair of the Committee in relation to Mr McAuley:*

- *by way of interim recommendations on 24 July 1997 in Document 11; and*
- *by way of draft final recommendations in Document 33.2, which Dr Hollingworth received under cover of Document 38 on 4 October 1997.*

*In relation to the first interim recommendation, it is apparent that this was accepted by Dr Hollingworth and that Mr McAuley stood down from the Committee while the complaint against him was considered by it.*

...

*Notwithstanding that for these reasons he did not accept the draft recommendations of the Committee in their precise terms, Dr Hollingworth did inform Mr McAuley that he would personally monitor the ongoing situation to assess any risk of conduct giving rise to further complaint, and he asked the Dean to do similarly.*

*It should be noted that the Committee’s recommendations as provided to Dr Hollingworth were clearly expressed to be draft and were unsigned. As events transpired, the Committee never provided any final recommendations to Dr Hollingworth in respect of the Complainant’s matter before the Committee was disbanded.*

*It is perhaps appropriate to make some comment on the general reference provided by Dr Hollingworth to Mr McAuley at Mr McAuley’s request. Dr Hollingworth was careful to express this reference in guarded terms that he believed would be read by other Church officials as less than unqualified. In*

*Dr Hollingworth's experience, other Bishops of the Church routinely followed up on written reference by seeking personal comment on potential appointees, especially where such references were simply addressed "to whom it may concern". Consistent with that practice, Monsignor Philip Green did contact Dr Hollingworth directly seeking comment on Mr McAuley's possible appointment in Tasmania and, as is apparent from Document 57, Dr Hollingworth provided full and detailed comment in relation to matters relevant to consideration of that appointment. "*

20.4 Ms Redlich responded. The essence of her complaint was that notwithstanding it was the Archbishop's prerogative under the Protocol to then decide what action to take, she criticises Dr Hollingworth for taking "no effective disciplinary action with the exception that after eighteen months Canon McAuley was eased out for budget reasons". Ms Redlich commented on what she saw as the failure to deal with some of the recommendations, and was critical of Dr Hollingworth's interpretation appearing in references given some two years later, of the findings and recommendations of the Committee.

20.5 The Complainant's response,

*"In response to your email of February 25, I would like to submit this short letter addressing the documentation that has been forwarded to me.*

*To the best of my recollection, the documentation seems to accurately reflect the timing of various events. As most of the documentation contained within was not made available to me at the time, this statement refers of course to those incidents in which I was directly involved.*

*I must say, that I found the attitude of the people in the committee that handled the case extremely professional and supportive. However, there are several matters that concern me over the*

*handling of the case, particularly in regards to the position taken by the Archbishop of the time, Peter Hollingworth.*

*At the end of the proceedings, I met privately with Peter Hollingworth (with my support person, also present), and I was informed that the issue had been taken very seriously, and that because of the complaint, the Archbishop intended to move Ross McAuley out of his current position. I was informed that because of the psychological state of Ross McAuley and because McAuley would be devastated to lose his priesthood, he would be moved on in a more indirect manner, and in a period of time. The Archbishop gave me the indication that McAuley would not still be in the position within the following 12 months, and that a lack of funding for a position of Precentor could be publicly used as the reason. I chose not to pursue this matter further within the church, as I felt that although this action was not as direct as I had hoped, it showed that my complaint had been taken seriously, and steps were being taken by the church to minimise the substantial risk that McAuley posed to others in the church community.*

*It disturbs me now to read private documentation of the events and to see that Peter Hollingworth's actual view of the matter was that there was 'no evidence on which to act, nor any way in which I could discipline him', particularly in light of admissions made by McAuley, and testimony of others who had experienced very similar behaviour as myself. It also disturbs me greatly to read the damning report on McAuley and the risk he posed that the committee had drafted, and to realise that the Archbishop ignored almost every recommendation. I do question the sense of having a professional committee of experienced people to deal with these sort of situations if the Archbishop can then blissfully ignore all of their advice. It leaves me with no other option but to consider that the private views expressed to me by Peter Hollingworth at that last meeting were expressed purely for the purpose of 'shutting me up'. It is also worth noting that my recollection of the information expressed at this meeting by Peter Hollingworth were substantially the same as those recollected by Alan Sandaver when I met to discuss the events with him this time last year, after Hollingworth's views on the matter were made public by the media.*

*On a separate matter, although I realise the need to reconcile two opposing views in these sort of situations, I do wonder in retrospect whether the 'mediation sessions' that occurred between myself and McAuley were the most appropriate way of dealing with the complaint. It does strike me that the allegations in my complaint were never substantially refuted, and as such, I see no good reason why this process was needed.*

*I also see a great need in these situations for a written report on the outcome of the investigation and the actions to be taken to be*

*supplied to both parties. This would prevent the problem that I experienced where the Archbishop seemed to privately acknowledge the wrongdoing to me, but publicly express a completely different opinion.*

*Finally, there seem to be references by McAuley in the supplied documentation concerning his appreciation of the friendship between himself and Hollingworth. I don't know whether Hollingworth shares McAuley's view of this friendship, but there seems to me also to be a need to have a contingency plan in place in cases where the accused party is a personal friend (or even longstanding colleague) of the church official who is given the responsibility of making decisions related to complaints.*

*I hope that these comments are useful in some way in your review of the protocol for handling complaints of this type. I wish you well in your task to reform this process."*

20.6 Dr Hollingworth's solicitors wrote 18 March 2003,

*"We refer to the Board's letter of 4 March 2003 in relation to the Complainant and the Respondent.*

A number of comments were made in respect of a letter from Dr Hurst and Fr Soley.

#### *The Complainant*

- *Dr Hollingworth agrees that he met with the Complainant after the CSA process had been concluded, although he cannot now recall whether Reverend Sandaver was present;*
- *Dr Hollingworth agrees that he told the Complainant that he had taken the Complainant's complaint very seriously (as he had) and that he also told the Complainant that Mr McAuley would remain as Precentor. He agrees that he probably indicated that the Complainant's objection to Mr McAuley continuing in that position would likely be resolved with the effluxion of time because it was by then already clear that declining cathedral finances would not allow the maintenance of the position of Precentor for much longer;*
- *nothing that was said by Dr Hollingworth at his meeting with the Complainant was for the purpose of "shutting him up". Dr Hollingworth says that everything that he said to the Complainant at that meeting was both correct and appropriately the subject of discussion between them;*

- *at the same time, Dr Hollingworth maintains that his advice to Monsignor Green in his letter of 28 June 2000 (Document 57) was correct when he said that;*

*“I ruled off the case, concluding that there was no evidence on which to act, nor any way in which I could discipline him, except to warn him to be very careful about his relationships, especially with younger people”*
- *Dr Hollingworth then believed and continues to believe that, notwithstanding that Mr McAuley’s conduct was blameworthy and not to be condoned, there was no evidence that warranted the taking of any formal disciplinary action against Mr McAuley - whether by way of dismissal, removal of his licence or convening the clergy offences tribunal;*
- *this does not however mean that Dr Hollingworth “ignored almost every recommendation” made in the draft report faxed to him. As indicated in Attachment D to our submission of 20 December 2002, it is apparent that Dr Hollingworth gave serious consideration to each of those recommendations. That document sets out the matters to which Dr Hollingworth had regard and his analysis of the appropriateness of accepting, and the extent to which he did accept, what were in any event draft and not concluded recommendations of the Committee;*
- *Dr Hollingworth agrees with the Complainant that, in hindsight, the protracted mediation convened by the Committee between the Complainant and Mr McAuley may not have been the optimal way in which to deal with this matter. While this is an issue that might better be addressed by the Board with Ms Redlich and Mr Axten, Dr Hollingworth does note that this was the first matter referred to the then newly formed Committee;*
- *Dr Hollingworth also agrees with the Complainant that a “contingency plan” would be needed in circumstances where an Archbishop was otherwise called upon to deal with a complaint made against a member of the clergy who was a personal friend;”*

21.1 As is stated above, the handling of the complaint by the Complainant against McAuley was concluded at the end of 1997. This was recorded in

a letter to the Chair and to the General Manager by Dr Hollingworth in June 1998.

21.2 All the other events in the future, that is the decision of Mr McAuley to leave the Anglican Church and to join the Catholic Church, and his receipt of a general reference, and then the letter from Monsignor Phillip Green to Dr Hollingworth seeking detail as to the complaint of sexual harassment, in strictness are not part of the handling of the complaint.

21.3 It is therefore unnecessary for the Board to be concerned with whose description of what occurred in the handling of the complaint is correct or not. It is sufficient for the Board to say that it was open to Dr Hollingworth to decide the matter as he did.

## **Conclusion**

22. As was recognised by Ms Redlich Dr Hollingworth was not bound to accept the recommendations of the Committee, though she is critical of him for not doing so. The Board must determine whether the decision which Dr Hollingworth took, namely to allow the Respondent to return to his post as Precentor after receiving treatment, and that he would leave when the funding capacity of the Diocese directed it, was a decision reasonably open for the Archbishop to make. In all the circumstances the Board considers this to be so, and therefore finds that the complaint was handled fairly, reasonably and appropriately.

Dated the twenty-second day of April, 2003

Peter O'Callaghan Q.C.  
Chairman

Professor Freda Briggs  
Member

# **BOARD OF ENQUIRY**

## **into past handling of Complaints of sexual abuse in the Anglican Diocese of Brisbane**

### **Report**

**FG (Complainant)**

**v.**

**John Elliot (Respondent)**

### **Complaint No. 5**

#### **The Complaint**

- 1.1 Between 1978 and 1981 the Complainant when a young boy was sexually abused by the Respondent who was the leader of the Church of England Boy's Group in the Complainant's parish and was also the Bursar of the Anglican Church Grammar School, East Brisbane (the "School").
- 1.2 The Respondent was a close friend of the Complainant's parents and a regular visitor to their home. On 14 February 2003 the Respondent pleaded guilty to ten counts of sexual abuse of the Complainant extending over a period of four years, ending in 1981.



## The Abuser is revealed

- 2.1 The Complainant says that he was reluctant to talk of the abuse to his parents. It was not until 1993 that the parents became aware of the abuse. The parents describe how this took place in a letter to the Board on 20 January 2003.

*“A casual remark and subsequent discussion regarding child abuse revealed that at least two of our sons had been the victims of such abuse. This discovery took place on 7<sup>th</sup> July 1993.*

*Further discussions with our sons revealed that the offences took place within the Church of England Boys Society while we were parishioners at a parish in Brisbane and at the Anglican Church Grammar School Brisbane where FG was a student. We discovered that by far the worst abuse had occurred to FG, our second son, although he would not tell us the nature of the offences as we would find them too unsettling. The perpetrator of these crimes was John Litton Elliot who was a family friend, leader of the CEBS Group, Bursar at the AGC School and subsequently ordained priest. He was Rector of the parish at Dalby at the time of these revelations.*

*We decided that because of our long and close association with the church and also that the offender was a priest we would initially advise the church authorities. Bishop John Noble who had previously been our parish priest was contacted and an immediate interview was arranged. My wife, and (another son), (who had also been abused) and I attended this meeting. Alarmed at what he heard Bishop Noble advised that he would contact Archbishop Hollingworth with the details.”*

- 2.2 Bishop Noble wrote:

*“Not long after I became a Bishop in July or August 1993 I was approached by the parents who were friends and former parishioners from when I was Rector of the Parish, where they were very active in church life. They informed me that their sons, especially FG, had been abused by a family friend a*

*layman at the time now a deposed priest named John Elliot. John Elliot is now in prison for sex offences against boys. ”*

*“The offences had occurred apparently when Elliot was Assistant Bursar at Churchie and the boys were students there. Some incidents happened at the school they said, and others in the parish. I was shocked and very distressed. I had other reasons to be dismayed and angry also. ”*

3.1 Dr Hollingworth’s Solicitors wrote:

“...

1. *some time prior, and probably in the period 15-20 July 1993, Dr Hollingworth was approached by Bishop Noble who conveyed to him a complaint made to him by the parents that Mr John Elliot had sexually abused their two sons many years previously Mr Elliott was a parish CEBS leader and when Bursar at Churchie;*
2. *Bishop Noble asked if Dr Hollingworth would handle this complaint because Bishop Noble felt unable to do so for personal reasons, being too close to the situation as a former Rector of the parish;*
3. *Dr Hollingworth agreed to deal with the matter and promptly arranged for Mr Elliot to see him at Bishopsbourne On 23 July 1993;*
4. *at this meeting, Mr Elliot admitted his wrongdoing as Bursar of Churchie and as a CEBS leader in relation to the two boys. He expressed apparently sincere and great penitence over what he had done, saying that no other boys were involved and that there had been no other wrongdoing on his part;”*

3.2 FG’s parents state,

*“Within a few days Archbishop Hollingworth phoned to say he had just finished interviewing John Elliot who admitted his guilt and confessed to all the offences. John Elliot now wanted to come out to our home to see us. The Archbishop asked that I phone him the next day to report on Elliot’s visit. ...*

*Elliot’s attitude was all self pity. It was all ‘poor me’ and that he was sad that he would never see FG again. Another comment he made was that ‘no harm was done’. At no time did*

*he ask for forgiveness or express any kind of remorse. My wife and I were sickened by his attitude and presence.”*

### **30 August 1993**

4.1 On this day the Complainant met with Dr Hollingworth. The Complainant by letter to the Board of 31 January 2003 states,

*“ . . . I first contacted the Anglican Church in 1993. I met with Archbishop Hollingworth and expressed my concerns that John Elliot, now a priest with the Church, was a serial paedophile and should have no contact with the general public at all. I gave Hollingworth details of abuse suffered at the hands of Elliot. When confronted with these allegations Elliot admitted his guilt. Hollingworth told me that these matters were best handled internally, that there was a process that needed to be followed and that there was no need to involve any other parties in this process.*

*It was also my wish at this time to seek professional help regarding my abuse. . . . Hollingworth states that he only indirectly discussed with me the matter of Elliot. This is not the case as we met on more than one occasion in his office and had numerous telephone conversations regarding what was going to happen about Elliot.”*

4.2 Dr Hollingworth’s solicitors in response to the Draft Preliminary Findings, on 20 December 2002 wrote of Dr Hollingworth’s recollections of his meeting with the Complainant.

- *Without Dr Hollingworth’s knowledge a young man made an appointment with Dr Hollingworth’s office to see him on 30 August 1993;*
- *Dr Hollingworth returned to his office from another meeting to find that a young man was seated there waiting to see him. This unusual circumstance arose because his secretary, Miss Roslyn Elliott was away at the time and there was no one to provide him with any background briefing prior to the meeting;*

- *The meeting commenced without Dr Hollingworth knowing who the young man was or what he had come to see him about;*
- *The young man did not introduce himself, or if he did, Dr Hollingworth did not hear his name. The young man may have presumed that Dr Hollingworth's office had informed him of the identity of his visitor;*
- *The young man asked whether Dr Hollingworth was aware that certain priests in the diocese had interfered with children and said that he could take such matters to the police;*
- *While Dr Hollingworth asked him to provide details, the young man appeared reluctant to do so. Alternatively, on the mistaken presumption that Dr Hollingworth knew the identity of his visitor, he may have assumed that Dr Hollingworth was familiar with the factual basis to his case as a result of Bishop Noble's report to Dr Hollingworth. The young man spoke very quietly as if to himself. As a result, if the young man ever mentioned his own name or Mr Elliot, Dr Hollingworth cannot recall hearing him do so;*
- *While pressed by Dr Hollingworth, the young man did not provide Dr Hollingworth with any specific detail to allow him to undertake subsequent enquiries;*
- *Instead he left somewhat abruptly without asking Dr Hollingworth to take any specific action;*
- *Following this meeting Dr Hollingworth considered that he had been provided with no information that would allow him to take any action and there was nothing about the meeting that led him to suspect that there was any connection between the young man and the FG complaint. It is only in recent times, having reviewed his office diary for that year and other materials in preparation of this submission to the Board that Dr Hollingworth has come to the belief that this young man was in fact FG. ”*

- 4.3 In a telephone conference with the Board on 2 April 2003, the Complainant responded to the above and as to the meeting on 30 August stated,

*“When I booked, as I logged into his diary that day that Secretary asked me, she asked me what’s it about, when I said I wanted to come and see the Archbishop, she said what’s it about. I said it’s about um, sexual abuse of one of your priests. And she asked me who it was about and then she logged me in. And I was not sitting in, just sitting in his office waiting for him to come in unannounced or unIntroduced or anything like that. And I have every time I’ve discussed this matter with people, the word repeated has been used, repeated abuse over many years by this guy. Hollingworth actually asked me to um, to describe actual incidents of abuse for him, by Elliot, so he could determine the nature and the extent of the abuse and this is the conversation that I had with him to the extent that he would then write to me a month later and say that he’s working things through and all of that sort of, the fact that he denies knowing who I was at that meeting I find an absolute insult. And to deny, he couldn’t put two and two together on the whole case, I find insulting.”*

- 4.4 The Board asked Bishop Noble in a telephonic conference his recollection of what he told Dr Hollingworth:

*“POC: ... well the essential question is what’s your recollection of what you were told by the parents as to the nature and extent of the abuse and what you told Dr Hollingworth.*

*B: Yes I understand the question. I can’t recall any great detail at all about the nature of the abuse or the extent of the abuse in time but it’s the duration, other than what is already there in the written account that you’ve supplied to me other of what I said at the time, or what I said in subsequent correspondence that is, that it had happened in the CEBS’s group and at school but I have no recollection of being told by the parents of it extending over any particular period of time other than just those locations. I don’t believe anything was said about it occurring over a period of years.*

*POC: Yes.*

*B: As it appears to be in the transcript.*

B: *Anyway and I certainly didn't give, get any great detail about the actual actions performed by Elliot you know the nature of the abuse that had occurred from somewhere I'd gained the impression that it was some kind of fondling and masturbation but I don't, I can't recall how I came by that information. Whether it was at that time or some other time. But there was nothing in what was said to me and what I passed on to Peter Hollingworth that would have led me to believe that it had been going on for a long period of time." ..*

"B: *...But I don't believe anything was said at the time which would have given me any kind of graphic detail and the nature of the abuse or the duration of it ..."*

"F: *Can I ask Bishop whether you would think it would make any difference whether it was a single event or multiple activity, wouldn't it be just as serious if it was a single event.*

B: *Oh yes that really has always been my reaction to my horror of it, perhaps that's why I didn't bother to enquire what sort of duration, or .... how many events really I can't recall discussing that.*

5.1 In the letter on behalf of Dr Hollingworth it is stated what Dr Hollingworth had decided after he saw the Respondent on 23 July 1993.

*"in order to assist him in deciding what further action should thereafter be taken, Dr Hollingworth required Mr Elliot to see Dr Slaughter, saying that a final decision on Mr Elliot's future would be dependent on Dr Slaughter's assessment of Mr Elliott following treatment and any recommendations he then made. Mr Elliot agreed to do so, noting that he already knew Dr Slaughter as he had been interviewed by him prior to his ordination selection back in 1983."*

5.2 *"On 4 September 1993 Dr Hollingworth saw Dr Slaughter at the St Francis College Ordination Selection Conference. He inquired of Dr Slaughter how his counselling and treatment of Mr Elliot was proceeding and asked for an assessment of any risk that might be involved in leaving Mr Elliot to continue in his ministry. At this time it was agreed that Dr Hollingworth would write formally to Dr Slaughter (which he did on 6 September 1993) and that Dr Slaughter would formally respond in writing. Like Dr Slaughter, Dr Hollingworth does not have a copy of a formal report claimed to have been written by Dr Slaughter.*

*Indeed, Dr Hollingworth does not recollect receiving anything other than a phone call in which Dr Slaughter told him:*

- *that he had seen Mr Elliot on several occasions;*
- *that, while there was nothing about his current behaviour that was a matter for concern and while Mr Elliot was clearly deeply penitent, nevertheless paedophiles tended to re-offend;*
- *that he did not feel able to say that Dr Hollingworth must remove Mr Elliot as Rector of Dalby but only that he should be careful to ensure that Mr Elliot not be placed in a situation where young persons would be at risk from him.*

5.3 Dr Slaughter did report in writing to Dr Hollingworth but he explained his files have been destroyed and it was necessary for him to speak from memory. This he did when he wrote to Archbishop Aspinall on 14 September 2002,

*“I do however have memories of Mr Elliot.*

*I first met him when I was helping access applicants for the ministry and I interviewed him as part of that process. He had been Bursar at Anglican Grammar School and on that occasion he gave me no evidence of any history of sexual irregularity . . . I do have a memory of being approached by Archbishop Hollingworth at the 1993 selection . . . the Bishop drew me aside and spoke to me about Mr Elliot. In the conversation that followed I remember making two points to the Archbishop. The first was that sexual attraction to young people and paedophilia was a permanent state and could not be changed.*

*The second point was that Mr Elliot had not been open at his selection and had knowingly withheld this aspect of his nature when offering himself. I told the Archbishop that when I asked Mr Elliot why he had not been open with me, he said he knew he would have been rejected for training for the priesthood. I said I thought the Archbishop should also take that into account.”*

#### **5.4 6 September 1993**

Dr Hollingworth had written to Dr Slaughter as follows,

*“Further to our conversation last Saturday, I am now writing formally at your suggestion seeking your professional advice as to what action should be taken in relation to the Reverend John Elliott.*

*In particular, I am anxious to ascertain whether or not he may be in situations of risk, given his position in the community and whether a program of treatment can effectively deal with his problem.*

*He has written to me saying that he gives his full permission to discuss the situation with yourself.*

*Thank you for your generous assistance in this and other matters.”*

5.5 Dr Slaughter writes,

*“I recall that the Archbishop did write to me for a report with Mr Elliot’s permission and I replied to this. As I no longer have the records I am not able to provide a copy of my reply. My memory of the content of that letter is less clear than my conversation but I think it included the following points. I restated that paedophilia was a lifelong state and therefore always a risk, that some people seemed more able to control the impulses, that Mr Elliot now expressed remorse and had co-operated in him seeing me and these things seemed positive.*

*I knew of no outside treatment or programmes then available. I felt unable to advise as to whether Mr Elliot could or should be removed from the priesthood but I did feel that he should not have dealings with the public and especially with young people.”*

6. On 19 September 1993 Dr Hollingworth wrote to the Complainant, from Bishopbourne as follows:

*“Dear (christian name deleted)*

*After making various enquiries about suitable psychiatrists with skills in the area we have talked about, I have come up with two names for you to consider. They are:*



*Dr Ken Fredericks  
Watkins Medical Chambers  
225 Whickham Terrace  
Brisbane*

*and  
Dr Ben Steinberg  
Ladhope Chambers  
131 Whickham Terrace  
Brisbane*

*Either of these would be suitable people to help you through your present difficulties.*

*You should know I am systematically working things through at the other end with a view to reaching a wise conclusion as to what must be done to solve the problem.*

*Please ring me if you wish to talk further with me.  
(Signature: Peter Hollingworth)"*

This letter should be seen in the light of the statements made on behalf of Dr Hollingworth in December 2002 that when he saw the Complainant on 30 August 1993, he did not connect him with the complaint made in respect of Elliot. (See para 4.2)

- 7.1 Dr Hollingworth's solicitors described his decision to let the Respondent continue in the ministry.

*"After considerable deliberation and after providing a very strong written caution to Mr Elliot, Dr Hollingworth decided that it was reasonable for Mr Elliot to remain as Rector of Dalby subject to a number of conditions:*

- *that he would apologise personally to the victims and their family;*
- *that he would disclose the matter to his wife and that Dr Hollingworth would speak to her (which he did) about the need for her to monitor Mr Elliot's ongoing behaviour and remain beside him as much as possible;*

- *that Dr Hollingworth would inform Mr Elliot's Regional Bishop (which he did) and ask that he monitor Mr Elliot's behaviour (which both the then Bishop and his successor agreed to do);*
- *that Dr Hollingworth would inform the other bishops within the diocese of the matter (which he did) and seek any suggestions they had for alternative action (none were forthcoming).*

*It needs to be stressed that, in reaching this decision, Dr Hollingworth had no reason to believe that the incident with the boys was anything other than a single, isolated and distant occurrence. There is no evidence of which Dr Hollingworth is aware that Mr Elliot ever offended again. ...*

7.2 This contention as to Dr Hollingworth's belief is as will appear hereunder maintained. It is difficult to see any reason to believe the abuse was a "single, isolated and distant occurrence". Clearly that was not the fact, as was only too well known to the Complainant, and of course to the Respondent. At no time has the Complainant or the Respondent stated to Dr Hollingworth that the abuse was an isolated occurrence.

7.3 On 30 November 1993 Dr Hollingworth wrote to the Respondent as follows:

*"Having given your situation long and prayerful thought, I have now reached the conclusion that no good purpose can be served in my requiring you to relinquish your pastoral responsibility as Rector of Dalby.*

*The matter which has exercised my mind most strongly is the fact that your departure at this stage could cause unintended consequences that would make things worse for you and the Church.*

*The major difficulty is that in not taking disciplinary action I and the Church could subsequently be charged with culpability while at the same time an act of removing you would place you in an impossible situation at your age and stage in life.*

*I therefore propose the following-*

*Firstly that you give a clear and written undertaking to me that you will not establish or have any close association with CEBS Groups or similar kind of groups for boys. Secondly that when in the presence of young boys you always have someone else with you. And thirdly that you take the option of retiring at age 65.*

*This action differs from the advice given to me by Dr Slaughter who is of the view that your problem is something which keeps recurring and is likely to happen again. I would like to see you as soon as possible when next you come down to Brisbane, and we can talk further about any other action that needs to be taken to protect matters in future.*

*I am conscious that you have felt the strain of a long wait, but that is part of the processes as I try to weigh up what is the right action in a complex set of circumstances. I will need to take some action to notify FG's family of my decision, and at this stage I cannot tell what their reaction will be. Please make an appointment with me as soon as possible."*

8.1 Dr Hollingworth's solicitors write of his meeting with FG's parents.

*"The parents came to see Dr Hollingworth, on 17 December 1993. They expressed concern that Mr Elliot had been allowed to continue in ministry. Dr Hollingworth sought to explain to them the reasons why, on balance, he considered this to be acceptable. While it was clear to him that they did not accept his decision, they did not disclose anything to him that led him to believe that any more severe action was appropriate on his part.*

8.2 The parents write of that meeting:

*"At the beginning of our interview we stated that (the Complainant's third brother) had made an appointment with a Solicitor. We asked him to put a hold on that so that we could speak to the Church about these serious matters. Hollingworth said that it was better to handle these matters 'in-house'.*

*During the interview with Hollingworth I urged him to dismiss Elliot from the Church stating he was not a fit and proper person to be a priest. Hollingworth said he would not dismiss*

*Elliot because at aged 63 he (Elliot) would find it difficult to secure another job. I then suggested Elliot be given a position somewhere within the organisation of the Church but away from a parish situation because he (Hollingworth) himself had said that 'paedophiles are never cured'. Hollingworth said that he would not do that either. I asked him why and he said that Elliot had only been in Dalby for about twelve months and that as the previous priest had left the parish somewhat 'under a cloud' if Elliot was removed now questions would be asked by the Dalby congregation. I suggested that if questions were asked reasons such a personal health or family matters could be given. Hollingworth again said that Elliot would remain at Dalby but under the following conditions:*

- 1. That if a CEBS Group is in operation it has to be closed down.*
- 2. Elliot undertake psychiatric counselling and report to Hollingworth on a monthly basis.*
- 3. Elliot retires at age 65 because he will then be eligible for a pension and would then be finished with Church ministry.*

*(Despite this third condition Hollingworth allowed Elliot to continue in Church ministry for several years after his retirement by allowing him to act as a locum in parishes. This continued until Elliot was charged by the police with other child sexual abuse offences. Only then did the Church revoke his licence.) I again said that it was not appropriate that Elliot should remain as a priest. Hollingworth then said that after discussing the matter with the Regional Bishop (Clyde Wood) he had decided that 'it is better to upset one family than a whole parish' and therefore Elliot would remain at Dalby. "*

### 8.3 Dr Hollingworth's solicitors responded,

*"On behalf of Dr Hollingworth, we provide the following comments in relation to the specifics of the account given the parents of FG of their meeting with Dr Hollingworth in December 1993 as set out in the first of these letters:*

- *Dr Hollingworth does not recollect the parents informing them that their son ... had made an appointment with a solicitor;*
- *Dr Hollingworth does not believe he said that “it was better to handle these matters ‘in-house’”. His belief is that he said that he had personally carried out a detailed pastoral and disciplinary investigation as to whether Mr Elliot should continue in ministry;*
- *Dr Hollingworth’s recollection is not that FG urged him to “dismiss Elliot from the church” but rather that he sought an explanation as to why Mr Elliott was being allowed to continue at Dalby and should not be removed from the parish in light of what he had done;*
- *Dr Hollingworth does not believe that he said “paedophiles are never cured”. Instead, his belief is that he said that paedophilia is probably a severe psycho-sexual disorder for which there is no known cure, but possible to control in carefully managed circumstances;*
- *Dr Hollingworth disagrees that he said that “the previous priest had left the parish somewhat ‘under a cloud’”. Consistent with the facts, he believes he said that there had been serious tension between the previous rector and the congregation which had destabilised things in the parish; that the parish badly needed to be settled; and that, unless necessary, a sudden termination would cause much unwarranted concern within the parish and would be very difficult to explain publicly;*
- *Dr Hollingworth did not say that the CEBS group would be closed down. Instead, Dr Hollingworth recollects that he told the parents that Mr Elliot would have no direct contact with any young people or youth group on his own and, further, that he also informed them of the other conditions that he had imposed on Mr Elliot’s continuance in ministry, including the need for the constant presence of his wife;*
- *Dr Hollingworth believes he did not say that Mr Elliot “would be finished with church ministry” when he turned 65. Instead, he recalls that he said that Mr Elliot would not be able to stay as Rector of Dalby beyond the age of 65, and that there was no discussion about possible locum tenencies beyond that time;*

- *Dr Hollingworth denies that he said, or would ever say, that “it is better to upset one family than a whole parish and therefore Elliot would remain at Dalby”; and*
- *Dr Hollingworth’s recollection is that the meeting was terminated more by the parents rather than by himself.*

*In relation to the parent’s letter more generally, Dr Hollingworth advises the Board that:*

- *as acknowledged in our submission to the Board of 20 December 2002, it was clear to him at the time the parents did not accept his reasons for not terminating Mr Elliot’s appointment. At the same time, however, Dr Hollingworth did not consider that the parents had provided any new information that should have led him to move away from the highly conditioned decision he had already made in respect of Mr Elliot;*
- *while deeply appreciating the parent’s position, it was Dr Hollingworth’s duty as Archbishop to weigh up all relevant issues in trying to reach a balanced pastoral and ethical decision.”*

8.4 In the telephonic conference that the Chairman had with the parents, they were asked what they had discussed with Dr Hollingworth in relation to the period of the abuse. The Father said,

*R: Right, no there was no discussion in that regard at all and we certainly did not give any impression that it had been a casual occurrence at all. Really the purpose of the interview was to find out what his decision had been regarding John Elliot. He’d already interviewed FG and Elliot and we hadn’t heard just what the outcome was to be. That was when we met him at a Church function and we arranged to meet him then later in December.”*

*“Yes correct. Anyway, yes, but that really was the purpose of the interview or the meeting, we didn’t discuss the length of the abuse because I’ve got to say at that time we were not particularly aware that it was over four years, we knew it was over a period, but we never dreamt it was like that.”*

- 8.5 The parents have also recounted in a letter written to the solicitors for the Complainant in February 2002 what occurred at a meeting with Dr Hollingworth. The parents make it clear that they did not convey to Dr Hollingworth the details of the abuse, because as they explained, they were essentially unaware of them. However as appears from their conference, they certainly did not convey to Dr Hollingworth that the abuse was an isolated occurrence.
- 8.6 Nor did Dr Hollingworth say to the parents that a factor in his decision was that the abuse was an isolated occurrence. It seems inconceivable that having as he said “personally carried out a detailed pastoral and disciplinary investigation”, he could have achieved that belief.
- 8.7 It is unnecessary to resolve the apparent conflict in the recollections of what was said ten years ago. Relevantly, the decision to continue Elliot in the Ministry was challenged and criticised by the parents, and defended and maintained by Dr Hollingworth.
- 8.8 The Board does not doubt that Dr Hollingworth made his decision after having discussed the matter with the regional Bishops who did not demur, and having sought Dr Slaughter’s advice. Further the conditions imposed he believed, minimised the risk of a recurrence of the abuse.

## 8 September 1995

9.1 In September 1995 FG's brother who had also been abused visited his parents and the Complainant. Consequently he wrote to Dr Hollingworth by letter of 8 September 1995.

*"I am writing this as I have just returned to Melbourne from a visit to my family in Brisbane and am very upset by an issue that has greatly effected my family and especially a brother of mine. For months or years he was molested by a man who was at that time a CEBS leader and lay preacher at the church we attended and the Bursar at Churchie, the school that my brother and I were attending.*

*Throughout the time he was preparing for the priesthood he was scarring many peoples' minds, perhaps effecting some for life.*

*I know that you know of John Elliot's activities and of my brother's case. WHAT I CAN'T WORK OUT IS WHY YOU SIR, WOULD HARBOUR A MAN WHO YOU KNOW HAS SEXUALLY ASSAULTED CHILDREN FOR YEARS. By letting him have a nice job in a quiet town away from the vicinity of his disgusting crimes. I do not see how a man who, it seems, has spent many of his waking hours for many years fantasising about young boys and messing with their minds could possibly be a fit person to hold the position of trust and responsibility in which you have placed him, a position that places him in the eyes of the congregation as someone who is a spiritual and moral example and guardian, society considers his type to be the lowest of the low as cold hearted devils. Why do you want to hold him up as a messenger of God.*

*I'm sure that John Elliot feels that a regrettable chapter of his life has closed, that by coming out with it as he did, that everything will be healing or be healed. I can imagine that by being in his current position, he can feel even better about himself that he is making up for his crimes, (and they are not just sins Sir they are crimes) and that everything will be sweet. Perhaps you too believe this Sir and that is why you are happy for him to be a priest. Because it is best for him. Well guess what. Things are not sweet for many boys and men who have been raped or manipulated by him. People like my brother may never get over it. My brother is not obsessed with revenge, but surely it is not too hard to see that when his attacker is so easily forgiven and kept under your wing my brother is denied the right to properly work through his feelings regarding his own guilt (or lack of) and his anger towards his aggressor. It seems to*



*him that the rest of the world is more interested in the feelings of the Rector of Dalby.*

*It is common knowledge that most paedophiles cannot easily stop their practice even when they have confessed what they have done and desperately never want to do it again. How will you feel if you find out at some point in the future that he has been doing such things again in Dalby. Some people would certainly consider you just as guilty as the aggressor himself.*

*I have not sent you a letter in a sealed envelope because I have got this issue on my mind and I want you to read it as soon as possible, so that you can send me a response as soon as possible. Frankly I don't care if others in the office read this. If you don't respond to this letter then several million others may get the chance to read it because I will publish it in newspapers and send it to television stations."*

## **10 September 1995**

9.2 Dr Hollingworth replied to the Complainant's brother as follows:

*"I can appreciate your concern for your family especially your brother the more so because I have been directly involved with them in endeavouring to resolve the situation in the fairest way possible.*

*I have offered professional help to your brother, but he has declined to take up the offer at this stage, believing that he can manage the matter himself. It is therefore not correct to say that he "is being denied the right to properly work through his feelings regarding his own guilt (or lack of) and his anger towards his aggressor.*

*It would not be true to say with regard to the priest concerned that nothing has happened in relation to what he did many years ago. He has been brought under the discipline of the church, made his confession and, under my direction, has been attending psychiatric treatment and assessment.*

*At the end of the day I made the judgment that he is now getting close to retirement and the disruption and upset that would be caused to the whole parish as well as to him and his family would be in nobody's best interests. He is profoundly penitent and deeply conscious of what he has done. I can assure you that he has had to pay for the consequences of his actions as has his dear wife.*

*The issue is really whether he is likely to behave in the same way again, and I have a guarantee from him that he will avoid involvement with young children and when he does so, be there in the presence of another adult at all times. It is also incorrect to say that he is comfortably ensconced in his parish, because the situation there is very difficult indeed, being in the middle of a drought and a continuing rural recession.*

*While appreciating your deep anger on behalf of your brother, I am bound to say that at the end of the day the Christian rule is one of forgiveness and reconciliation. That is no easy thing to achieve in this instance and it will be my continuing task to help in the process of reconciliation in any way that I can. This in no way exonerates him for what he has done, but is simply to say that God's last word is one of forgiveness for those who are truly sorry for their sins and who then seek that forgiveness. If he ever does this kind of thing again he knows that I will remove his license immediately.*

*I am willing to continue any pastoral conversations that may be necessary although you will appreciate that my primary concern is for your brother. I am not influenced however by the last two lines of your fax, because that is in nobody's best interests and certainly not that of your family."*

### 9.3 The parents write in relation to this letter,

*"In September 1995 our eldest son was visiting from Melbourne and saw how traumatised the family and more especially FG were. Unknown to us (he) wrote to Archbishop Hollingworth on 8<sup>th</sup> September 1995 expressing concern regarding the Archbishop's attitude and handling of Elliot's crimes. Upon receipt of that letter the Archbishop phoned us to ask what had happened to cause him to write. My wife told him that he had seen the damage that had been done to us all and that in the eyes of the boys justice had not been done as Elliot was still Rector at Dalby and preaching the word of God. Archbishop Hollingworth's reply to that statement was 'Yes' and that he would reply to the letter. On receiving the Archbishop's letter dated 11 September 1995 (the son) phoned to say how upset he was by its insulting tone.*

*Shortly after this we were at a wedding where Bishop Noble was a fellow guest. He approached us and apologised on behalf of the church for the tone of the letter sent to ... .. He stated that the Archbishop had shown him the letter and he had urged the Archbishop not to send it because of its offensive tone. This advice was ignored.*

*We should say here that right from 1993 when we first learned of this dreadful and agonising crime FG had asked us not to discuss the subject of his abuse as he was trying to put it out of his mind and cope with it as best he could. We respected his wishes. We were not aware that he was not coping very well and was in fact receiving psychiatric help. On 26 December 2001 FG became distressed and we learned that he was still very traumatised. We were then able to share with him how the whole family had been let down by the church authorities. This knowledge coupled with his own experiences prompted him to try to bring a closure to the matter in view of the church's failure to act. FG then contacted the police and his Solicitor.*

*My wife and I have been active members of the church all our lives. (The letter goes on to describe specific roles held in the parish by the members of the family – these have been deleted to preserve their privacy in the matter.) Our whole lives have revolved around the church but now our perceptions and expectations of the church we loved have been crushed. We trust that this information is of help in ensuring that the events which overtook our family do not occur again and that the attitudes and cultures within the church that allow these events to happen our changed.”*

- 9.4 Bishop Noble has written a lengthy account of his knowledge of these matters as set out.

*“Not long after I became a Bishop, in July or August 1993 I was approached by FG's parents who were friends and former parishioners from when I was Rector of the Parish of ....., where they were very active in church life.*

*They informed me that their sons, especially FG had been abused by a family friend – a layman at the time – now a deposed priest named John Elliott (sic). Elliott is now in prison for sexual abuse offences against boys.*

*I knew the Elliots too, his wife better than John, but we had been friends. John had been a Diocesan leader in the CEBS and also in various parishes including ....., By the time I took up ministry in the parish, John was in process of being ordained and was moving to take up ministry in Bundaberg. He was therefore not active in the Parish. Mrs Elliott though, remained in the parish for a good part of my first year there, and we worked together in ministry.*

*The offences had occurred apparently when Elliott was Assistant Bursar at Churchie and the boys were students there. Some*

*incidents happened at the school, they said, and others in the parish. I was shocked and very distressed. ...*

*I informed Archbishop Hollingworth as the letter says. .... I specifically indicated to the Archbishop that I wished/needed to distance myself from the FG's complaint as the Church's representative in handling the matter –*

- 3. because of my friendship with them and to some extent certainly with Mrs Elliott and her family (I had taken the daughter's wedding, for example)*
- 4. because of my anxiety and anger I did not trust my judgment in handling it.*

*The Archbishop then handled it himself, in consultation with the Bishop of the Region where Elliott was serving at the time.*

*...*

*By and large the matter was handled by the Archbishop himself in consultation with the Bishop of the Western Region, Bishop Clyde Wood. If the matters were reported upon in a Bishop's meeting I would usually remain quiet or reiterate to the Archbishop, words to the effect, "You know how I feel about this Peter".*

*The Archbishop sent Elliott to a psychiatrist in the latter part of 1993. I believe the psychiatrist advised the Archbishop that Elliott was a paedophile and that paedophiles do not change their behaviour. I believe he warned the Archbishop against leaving Elliott in office.*

*The Archbishop wrote to Elliott telling him of his decision, to leave him as Rector of Dalby. I had great misgivings about this at the time but distanced myself from it, for the reasons given above. As I remember it, there were to be certain conditions including professional help, supervision (I cannot say by whom or in what form) and forbidding involvement with children especially boys.*

*He was also to be required to retire at age 65, though canonically he could otherwise go on to age 70.*

*I recall the Archbishop saying that he had warned Elliott in the letter he wrote to him telling him of his decision, that he was taking a risk in acting against psychiatric advice, but that he considered however the needs of the parish and the effect of disclosure and removal of Elliott on them and the financial circumstances of the Elliotts themselves to be such that he would set that advice aside, trusting in the various sanctions he had put in place. Elliott had claimed that his paedophile activities had ceased with his*

*ordination, and the Archbishop seemed to set considerable store by this, and I think he hoped that Elliott would respond to the Archbishop's expression of a degree of trust, and would comply.*

*When the full Thursday bishops meeting was told of this it was my impression that it was already arranged.*

*...*

*I was the Bishop of the Northern Region. FG's family had by the mid 1990's moved to .... in retirement. As the bishop of the area I met them in church from time to time and we talked as friends. ... They continued to be deeply worried about FG and we talked about that. They could not understand the Archbishop letting Elliott stay in office. They told me the boys – FG and his brother had particular difficulty. I explained the constraints the Archbishop had placed on Elliott and the termination date, in the hope that they would see that the Archbishop had not totally exonerated Elliott. They were not impressed.*

*Around the last quarter of 1995 FG's brother ... faxed the Archbishop at his office in Ann St. I find it hard to remember the context or those present, but I remember that the drift of the letter was that he did this to make quite open what Elliott had done and he wanted people to know how angry he was, and he was prepared to expose all this to public gaze. I think the fax may have mentioned exposure in the Media. The letter questioned the Archbishop about how he could leave a paedophile in office. ...*

*I remember that the Archbishop seemed very angry about the brother's action. The Archbishop may also have spoken to him on the phone as is mentioned. I believe a couple of days after the fax the Archbishop wrote to the brother. The letter would be in the brother's possession. The letter answered the brother's complaints and offers a defence of the Archbishop's action. My concern at the time was the defensive reaction of the Archbishop, and I feared that the letter would come across in an angry and defensive way. I think the Archbishop was attempting to make the brother see that going public might cause FG and his family further harm, and also that the measures he the Archbishop had taken had been adequate, I feared the letter could expose him to accusations of insensitivity to the victims and greater concern for the Elliotts.*

*I think I saw the letter only after it had been sent, so in a sense it was too late, but I recall being concerned it might backfire on the Archbishop at some point in the future. I can't affirm that I said, as the parent's letter sets out, that I urged the Archbishop not to send it, because I think it had already gone. I may have expressed concern in a meeting that it was unwise to write in the way he had*

*reported. Given my general distancing from the matter as set out above, I was still very wary about offering advice to the Archbishop as to what to do. I certainly was very concerned about it though.*

*I saw the parents as reported and I learned of their reaction to the Archbishop's letter. I sought to minimize what I perceived to be the damage it was causing, and so apologised. I am not sure that I said it was insulting, but I may have done so.*

*Elliott stayed at Dalby until early 1998 when he retired. The Archbishop then gave him a general licence, a common practice with respect to retired priests. I think there was some sympathy for the Elliotts in the sense that they had little to retire on, and lived in impoverished circumstances, and if he could get a little money for occasional services, it would help them both. In other words there was an extension of the compassion shown to them in allowing them to remain in Dalby for the over four years from 1993.*

*Elliott repeatedly claims he has not committed any paedophile acts since being ordained. I think he was given a licence on the basis that this was true. I do not know if further warnings were given to him about restricted engagement in ministry. Elliott had ceased to have any involvement with children as far as I know, and confined his work to helping during church services and in adult church organizations at Redcliffe.*

...

*This matter has deeply troubled me over the years. I have been bound up in it personally of course. At times it has been a matter of some regret to me that I did not speak up more at moments when better judgment may have led to different outcomes, but found myself in a difficult and very ambivalent situation, as I have indicated."*

9.5 The reason in referring to these letters is not to attempt the resolution of differing recollections, as to what took place. Further whilst it appears that Dr Hollingworth's letter angered the brother and the parents, the Board has no doubt that this was not Dr Hollingworth's intention or desire.

9.6 In the opening paragraph of the letter the Complainant's brother wrote,

*"For months or years he was molested by a man who was at that time a CEBS leader and lay preacher at the church we attended*

*and the Bursar at Churchie, the school that my brother and I were attending. ...*

*I know that you know of John Elliot's activities and of my brother's case. What I can't work out is why you Sir would harbor a man who you know has sexually assaulted children for years."*

- 9.7 Dr Hollingworth's reply to that letter was to return to his decision saying in relation to Elliot,

*"He has been brought under the discipline of the Church, made his confession and, under my direction has been attending psychiatric treatment and assessment.*

*At the end of the day I made the judgment that he is now getting close to retirement and the disruption and upset that would be caused to the whole parish as well as to him and his family would be in no body's best interests. He is profoundly penitent and is deeply conscious of what he has done. I can assure you that he has had to pay for the consequences of his actions as has his dear wife."*

- 9.8 Dr Hollingworth's reply does not appear consistent with him then holding the belief that the abuse was isolated. If he held that belief, then he would reasonably be expected to have corrected, however gently, the assertion that the abuse was protracted. The assertion by the Complainant's brother that the abuse had extended over years, was the fact. Dr Hollingworth's solicitors have now advised that Dr Hollingworth considered this to be an exaggeration and therefore ignored it. To sum up, Dr Hollingworth's reply is more consistent with him not having the belief that it was an isolated occurrence.

## **10 September 1999**

- 10.1 Archbishop Hollingworth wrote to Bernard Yorke the General Manager of the Diocese as follows:

*“This matter involves a priest in the diocese of Brisbane now retired and with permission to officiate from me. Some four years ago, the parents of two boys came to inform me that there had been a family conference and the boys alleged that the person concerned, when as a layman and school Bursar, had been involved in sexual practices with them when they were in their early teens.*

*The man concerned was subsequently ordained as a priest in 1986 without any knowledge of these matters on the part of the Archbishop of the day. After considerable discussion involving Bishop Noble, myself, the parents and indirectly the boys, the priest concerned made his confession, expressed his deepest apology and regret to the family, shared the matter with his wife and I then proceeded to make a plan with him about how to handle matters from here onwards.*

*I asked him to write to me regularly which he has done throughout the remainder of his ministry in a country parish. I instructed him not to have any contact with young people on his own or to be involved on his own in a youth group or activities. I believe he has carried out these instructions faithfully.*

*Since his retirement eighteen months ago, he had been requested by various clergy to undertake locum tenancies in various parish parishes and these have all been very satisfactory.*

*Last year the young man concerned who lives interstate and who remains angry, made a phone call where the priest has been previously serving and the matter was dealt with by Bishop Charles who was then Bishop Administrator of the diocese in my absence. The priest concerned is well aware of these periodic threats that come from the young man and to date there has been no indication that he intends to carry out those threats involving legal action.*

*Whenever these threats occur, I inform the priest as a means of warning him that he is not out of difficulty and must behave with the utmost care and circumspection. The situation continues to be closely monitored and I have no reason to*



*believe that there are risks involved in his carrying out locum tenancy duties. The biggest concern to the insurers is, of course, if the young man at some stage decides to take legal action involving events that occurred when the said person was a layman. I intend to speak with him as he is about to embark on another locum tenancy in the country warning him that the diocesan insurers have again raised the question and are seeking another internal report from me.”*

- 10.2 Again that letter is much more consistent with a belief that the offence was not an isolated incident but something more serious as shown by the phrase,

*“The boys alleged that the person concerned when as a layman and school bursar had been involved in sexual practices when they were in their early teens. ...*

*After considerable discussion involving Bishop Noble, myself, the parents and indirectly the boys, the priest concerned made his confession, expressed his deepest apology and regret to the family, share the matter with his wife and I then proceeded to make a plan with him about to handle matters from here onwards.”*

- 10.3 Nothing there suggests the holding of a belief that it was an isolated occurrence, and this was an occasion (i.e. informing the manager of relevant facts) when if it were thought to be an isolated incident, it would and should have been pointed out.

- 11.1 There the matter rested until 1999 when Dr Hollingworth wrote to Elliot urging him to keep a low profile.

*“I have to raise again the issue of the complaint that was raised against you some time ago by the two brothers. Nothing further has occurred from that quarter except that the diocesan insurance company is now demanding that confidential information be provided to them of potential complaints against clergy with regard to possible insurance ramifications. There is some unease that you*

*are in a profile situation in doing longish term locums in major centers and about your name being included as part of the regular staff of parishes as is the case in Redcliffe.*

*In normal circumstances I would deem it unwise to put you at further risk of exposure and complaint but I also appreciate the difficult state of your family finances and of your need to continue doing work. I think the proper course of action would therefore be for you to consult with me before accepting any offers of locum tenencies of any length. I also think it unwise that you should be appointed to the regular staff of Redcliffe if that is what Graheme has in mind.*

*This letter does not require a response from me nor do I wish to raise any further anxieties for you.*

*... Events of the past months have simply served to highlight the delicate and invidious situation the church is in and the potential for legal action on the part of the aggrieved individuals, some of whom may feel it is now open season to do so.*

*I had hoped to see you personally before you went out to Chinchilla and after your happy and fulfilling time at Bundaberg. Thank you for the work you did. I am sure it was valued by all."*

11.2 The Respondent replied to that letter,

*"Thank you for your recent letter and I have noted your remarks. As you surmise, the main reason I am undertaking these locums is for financial reasons and I have been most careful in all my actions. I will decline any approach to be on staff in any permanent manner at Redcliffe. However, Graham has asked me to look after the parish while he takes long service leave in June/July 2000. That is the only locum I have been asked to do when I finish here and of course Graham is keen for me to do it for him.*

*I would quite like to retire and enjoy some time at home and travel within Australia but the financial situation is grim.*

*Thank you again for your understanding and thoughtfulness which is very much appreciated though I must admit I feel just a little low.*

*With best wishes and God's blessing."*

## 13 July 2001

12.1 Bishop Administrator Appleby (Dr Hollingworth having being appointed Governor General on 29 June) wrote to the Respondent,

*"I have been informed of the fact that you have been charged with thirty-eight offences, and are to appear before the Brisbane Magistrate's Court on 25 July.*

*In the light of this information, I must require you to return your authority to officiate license until such time as this matter has been resolved. In the event of you pleading guilty to any of the charges, you understand that I will have no option but to revoke the license.*

*All of this means, of course that you must not exercise any ministry as a priest until the charges have been determined by the court.*

*You will understand, I am sure, how much it grieves me to write to you in these terms."*

12.2 The Respondent replied,

*"By now GH should have been in touch with you with my crisis. All this happened 30 years ago when I was in the Bank at Bundaberg but of course it concerned CEBS. ... The charges read very badly. I must state that all references to sodomy are not on. I have never committed sodomy on anyone, man or boy or female in my life and have never had it committed on me. I was deeply shocked by these allegations, Also the evidence from (another) is also fabricated. I am to appear at magistrates Court No. 1 on 25th. July at 9am.*

...

*My sincerest apologies that this has arisen at this time."*

12.3 Notwithstanding his denial, that references to sodomy are "not on", on 27 March 2002 in the District Court at Brisbane, Elliot having pleaded guilty, was convicted of ten counts of sodomy with a male under eighteen years of age and eighteen counts of indecently dealing with a child under fourteen years of age. The offences were committed in four different places and took place between 1970 and 1976. Elliot was sentenced to seven and a half

years in gaol with eligibility to apply for parole after thirty months. Dr Hollingworth, Bishops Noble, Wood and Appleby had no knowledge of these offences prior to July 2001.

- 13.1 Dr Hollingworth has by statutory declaration made 8 April 2003 declared that until he had learned of facts from documents provided by the Board of Enquiry:

*"I had believed, on the basis of things said to me by Bishop John Noble, the parents, that Mr Elliot's abuse of FG while deserving of condemnation, had been isolated and had not been perpetrated over any extended period."*

- 13.2 The only person other than the Complainant who had direct knowledge of the abuse was Elliot. In a letter recently received from him he states, inter alia:

*"I attended Bishopbourne as stated in your letter. Dr Hollingworth told me of the accusations that I had sexually interfered with the boys which had been advised to Bishop John Noble by (the father). I admitted the offences. I can honestly say I do not remember if we went into any intimate details except the places where the acts had occurred. He stressed the gravity of the charges and I told him that I really sincerely regretted them and especially the effect they had had on the Complainant. I don't recall the time frame being mentioned but no doubt the charges would have covered that."*

- 13.3 As appears from paragraph 4.1 above, by letter of 31 January 2003, the Complainant stated that he described Elliot as a serial paedophile and told Dr Hollingworth:

*"Details of the abuse suffered at the hands of Elliot"*

In the telephone conversation set out at paragraph 4.3, the Complainant said that he had told Dr Hollingworth that it was repeated abuse over

many years, and that it was an absolute insult for Dr Hollingworth to say that he did not know who the Complainant was, when he met with him on 30 August 1993.

13.4 In a further telephonic conference on 11 April 2003, after the Chairman had read to the Complainant parts of a letter the Board had received from the Solicitors for Dr Hollingworth, the Complainant was asked:

*POC: ... can you recall as best you can what in fact you said to him.*

*FG: What in fact I said to him was that these were repeated abuses.*

*POC: Yes.*

*FG: It was not an isolated case and that there were other people that I could name who were victims of this guy.*

*POC: Yes.*

*FG: Um, in no way did I go there and indicate in any way that this would be anything but an isolated incident, I don't know if I said that correctly.*

*POC: Did you, what I think you were saying, you may have used a negative when you intend to.*

*FG: Right exactly.*

*POC: But did you tell him in your recollection,*

*FG: Mmm.*

*POC: Anything to the effect that the abuse occurred only on an isolated instant.*

*FG: I only ever have told him that this was repeated abuse.*

*POC: Yes, and did you, was any period mentioned.*

*FG: I, don't recall if I actually said four years, or gave him specific dates of how many hundred of times he abused me,*

POC: *Mmm.*

FG: *He was, definitely told by myself that these were repeated abuses.*

POC: *... in the Solicitors' letter of the 20<sup>th</sup> of December 2002 it said that, it said the young man spoke very quietly as if to himself.*

FG: *That's right.*

POC: *As a result if the young man ever mentioned his own name or Mr Elliot Dr Hollingworth cannot recall hearing him do so.*

FG: *That's right.*

POC: *What do you say to that.*

FG: *I don't know where to start quite honestly.*

POC: *Well perhaps if I can direct your attention to, can you recall what Dr Hollingworth called you.*

FG: *(The answer was FG's correct name)*

POC: *Yes. And did you at any time mention the name Elliot.*

FG: *I most certainly mentioned the name Elliot when I was asked who was this person.*

POC: *Yes. And in the letter of 9<sup>th</sup> of April it is said that Dr Hollingworth agrees that he asked FG to describe to him the nature of the acts of abuse that had been committed,*

FG: *Mmm.*

POC: *And that FG led him to believe that these acts constituted genital handling and masturbation but did not extend to anal penetration or similar.*

FG: *Yes.*

POC: *Do you recall that.*

FG: *Yes I do because that has been, it was interesting that he recalled that part of the conversation, because that is the fact when he asked me to describe the sort of abuse that had occurred that is the description that I give, that is in my police statements, and that is the facts of the abuse. ...*

...

FG: *The conversation was not one of a muffled, muffled mumblings and I can't understand it, I don't know, also what I can't understand um, a few of the points of that letter of the 9<sup>th</sup> of April I think is the date,*

POC: *Yes.*

FG: *Um, why would I have received correspondence from Dr Hollingworth I believe it's the 19<sup>th</sup> of September three weeks after our appointment if he didn't know who I was. If he had no idea who I was,*

POC: *Yes.*

FG: *How did he know my home address and phone number,*

POC: *Yes.*

FG: *I just don't know where to begin*

POC: *That letter is that you've sent a copy and you had the envelope and it shows that the letter was posted on the, at 6.00 p.m. on the 19<sup>th</sup> of September 1993.*

FG: *That's correct.*

POC: *And presumably you would have received it shortly after that.*

FG: *That's correct.*

POC: *And the, when you said about a phone number, what did you mean by that.*

FG: *Well just that the records show of his diary entry of that date of the 30<sup>th</sup> of August I think it is,*

POC: *Yes.*

FG: *It had (my name) and that is my old home phone number next to it, so,*

POC: *Yes I see.*

FG: *He's rung me, he rang me on that phone on occasions, he certainly and completely knew who I was.*

POC: *Yes.*

FG: *The phone number that's written in the paper work there is my old number and I have an envelope addressed to an old house that I lived in, at the time so.*

POC: *Yes. And that,*

FG: *That was three weeks after my appointment.*

POC: *Yes.*

FG: *So, anyway, you know that.*

POC: *And I just, and you said to Dr Hollingworth, I think you've said previously that you told him that there were other boys.*

FG: *That's right.*

POC: *Yes.*

FG: *I had to at the time implore this man how um, this guy was a danger to society and in any of my discussions of a serious nature about this subject and especially you know I just, there are so many, I might have to stop this right now actually. (Somewhat distressed)*

POC: *O.K. if I could just ask you one other question.*

FG: *Yes.*

POC: *You, as your parents have said, you didn't want to discuss it with your parents.*

FG: *No I did not.*

POC: *... was that your attitude when you saw Dr Hollingworth.*

FG: *No it wasn't.*

FG: *...  
Just to get back to that point of the question I could not answer before, I just want to state that I told Dr Hollingworth that this was repeated abuse and that he was notified of that a number of times in fact,*

13.5 In his letter of 31 January 2003 and in the two telephonic



conferences referred to FG consistently says that he told Dr Hollingworth the details of the abuse and that it was repeated. The fact that FG did not specify a period over which the abuse occurred is immaterial. This does not alter the essence of what he told Dr Hollingworth. It is inherently probable that FG would have told Dr Hollingworth the details of the abuse and that it was repeated, because his intention in seeing Dr Hollingworth was to impress on him the seriousness of the abuse and thus the unsuitability of Elliot to continue as a priest. On the other hand it is inherently improbable to accept that FG would have said anything which conveyed to Dr Hollingworth, that the abuse was an isolated incident. The Board finds that FG told Dr Hollingworth the details of the abuse and that it was repeated.

13.6 The Board cannot accept that in 1993 Dr Hollingworth had the belief that the abuse was an isolated occurrence. There was not the slightest basis for him to have that belief. This is undoubtedly what Dr Hollingworth now believes was his belief, but that the Board suspects is the product of reconstruction in distinction to recollection.

The statements made on Dr Hollingworth's behalf by his Solicitors demonstrate that Dr Hollingworth's recollection is, to say the least, suspect. In December 2002 Dr Hollingworth did not connect the

person with whom he had the conference on 30 August with the abuse perpetrated by Elliot. (See para 4.2). It follows that in December 2002 Dr Hollingworth could not then recollect, but had forgotten, that he did know that FG was Elliot's victim.

13.7 In December 2002 Dr Hollingworth had obviously forgotten that he had written the letter to FG less than three weeks after the conference and referring to that conference. On the letter he addressed FG by his correct first name, and that was what FG had said he called him during the conference. In December 2002 Dr Hollingworth said:

*“If the young man ever mentioned his own name or Mr Elliot, Dr Hollingworth cannot recall hearing him do so.”*

13.8 In all those circumstances the Board has no hesitation, as it has stated, in accepting the recollection of the Complainant, and it accordingly follows that Dr Hollingworth, at the time he made his decision to continue Elliot in the ministry, was aware that he was a person who had repeatedly abused FG and also had abused, though not to the same extent, FG's brother.

....

14.1 On 14 April 2003 Dr Hollingworth's Solicitors wrote:

*“Mr Elliot's letter is consistent with Dr Hollingworth's advice to the Board, confirming that the period during which the abuse occurred*

*was not discussed between them although it was later detailed in the charges on which Mr Elliot was subsequently convicted.”*

14.2 The Board accepts that a period was not discussed, but significantly Elliot spoke of “*the places where the act had occurred*”, and in no way suggests that he told Dr Hollingworth the sexual abuse was an isolated offence.

14.3 The Solicitors further wrote,

*“What Dr Hollingworth says is that he understood that Mr Elliot’s abuse of FG was isolated and that he did not understand, until that became apparent from the papers provided by the Board, that Mr Elliot’s abuse had been committed over a period of four years. The only person who says that they provided any detail of the abuse to Dr Hollingworth is FG.*

- *FG does not say that he told Dr Hollingworth that the abuse extended over a period of four years*
- *Rather FG says that he told Dr Hollingworth that the abuse was repeated.*
- *Dr Hollingworth has no recollection of FG using the word “repeated” or any similar description.*
- *Dr Hollingworth does agree that while certainly he did not provide names FG may have made some comments that left him with the impression that FG was not the only person abused by Mr Elliot.*
- *However such references as may have been made in this regard did not come as any surprise to Dr Hollingworth because he had previously been told that Mr Elliot had also but to a lesser extent abused FG’s brother.*
- *FG does not say that he named in his conversation with Dr Hollingworth any other person who had been abused by Mr Elliot.*
- *Accordingly it is perfectly understandable that Dr Hollingworth was not led to believe that there were multiple other persons who had been abused by Mr Elliot.*
- *While it is apparent that Dr Hollingworth later failed to connect the young man who met with him on 30 August 1993 with FG and did not again recognise*

*that connection until recently, it is clear that Dr Hollingworth did know at the time that he was meeting with FG about whom Bishop Noble had spoken to him and that the allegations in question were made against Mr Elliot.”*

*We submit that in these circumstances, the Board is faced with conflicting recollections about whether or not the word “repeated” was used. In the absence of third party corroboration there is simply no basis upon which the Board can conclude that FG did in fact tell Dr Hollingworth that he had been repeatedly abused by Mr Elliot.*

*Moreover the word “repeated” is inherently vague, capable of meaning anything from two onwards. It is possible that, if the term was used, it was regarded by Dr Hollingworth at the time as referring to Mr Elliot’s abuse of FG and his brother as the events taken together were “repeated”. Accordingly, it is distinctly possible that Dr Hollingworth may have heard the word without it conveying to him any additional assertion beyond those of which he was already aware.*

*Certainly there is no evidence whatsoever that FG told Dr Hollingworth that Mr Elliot’s abuse of him persisted for an extended period of four years. Whether or not the word “repeated” was used, two facts are therefore indisputable.*

- *“Dr Hollingworth was never told the period over which Mr Elliot’s abuse of FG had extended.*
- *Dr Hollingworth understood that such abuse had been isolated.*

*When judged against those facts we submit that the Board is bound to conclude that Dr Hollingworth’s decision not to seek the removal of Mr Elliot but to allow him to remain at Dalby subject to the strict conditions then imposed was reasonable.*

*The Board may be of the view that a contrary decision should have been taken by a person who was aware that Mr Elliot had abused FG over an extended period of four years but Dr Hollingworth was clearly not such a person. Furthermore, given the irreconcilable conflict of evidence about what was said by FG and the inherent vagueness of what he says he said, the Board cannot be reasonably satisfied that Dr Hollingworth should have been aware that Mr Elliot’s abuse of FG extended over a protracted period.”*

14.4 Those submissions are not accepted. Undoubtedly there is a conflict, but it is one which the Board considers is easily resolved in FG’s favour. The Board finds nothing “inherently vague” about FG’s evidence. He has

clearly and consistently said that he told Dr Hollingworth the details of the abuse and that it was repeated abuse. In saying so, FC was stating what undoubtedly was the fact, and it beggars description to think that he would have said the abuse was isolated. On the other hand Dr Hollingworth's recollection is demonstrably faulty. The first submissions received in December 2002 stated that Dr Hollingworth had not made the connection between FG and Elliot at the time he saw FG on 30 August. It is now said:

*“While it is apparent that Dr Hollingworth later failed to connect the young man who met with him on 30 August 1993 with FG and did not again recognise that connection until recently, it is clear that Dr Hollingworth did know at the time that he was meeting with the FG about whom Bishop Noble had spoken to him and that the allegations in question were made against Mr Elliot.”*

14.5 What the Board understands from that submission is that in December 2002 Dr Hollingworth could not recollect that FG was the person who had been abused by Elliot and that he was there talking of those matters. It follows that at December 2002 Dr Hollingworth had forgotten or could not recollect what he had been told by FG. At that time December 2002 he believed as he does now, that what he had believed in 1993 was that the abuse was an isolated occurrence. There is no evidence that anyone told him that. The parents and Bishop Noble did not, nor did Elliot. It seems to the Board that Dr Hollingworth looking back from 2002, to a date when he made the decision to continue Elliott, concluded that he must have believed it was an isolated occurrence, to make that decision. Put another way Dr Hollingworth has necessarily engaged in reconstruction, because he had no recollection. The Board accepts that Dr

Hollingworth's current belief is that he believed in 1993 that he was told or gained the impression the abuse was an isolated offence. But in the light of FG's credible and consistent evidence that he told Dr Hollingworth the details of the abuse, and that it was repeated, the only explanation short of mendacity (which the Board does not suggest is the case) is that Dr Hollingworth has no recollection of the true facts and what he had been told by FG. That points to a failure of recollection, because Dr Hollingworth is now apparently convinced that in fact he was speaking to the person who was abused by Elliot.

- 14.6 The Board accordingly finds that when Dr Hollingworth decided to continue Elliot in the ministry he knew from what FC had told him that the abuse was not isolated, but had been repeated abuse. The Board is far from saying that it would have been appropriate to have continued Elliot in the ministry even if his offence was isolated, but given the abuse was suffered and accurately described by FG Dr Hollingworth's decision was untenable.

### **Conclusion**

15. The Board finds that Dr Hollingworth's handling of the complaint in respect of John Elliot was not fair reasonable and appropriate. Notwithstanding that the decision was made in good faith with no demur from the bishops whom he consulted, and under conditions of supervision that were believed to minimise recurrence, no Bishop acting reasonably could have continued a known paedophile as parish priest.

Dated the twenty-second day of April, 2003

Peter O'Callaghan Q.C.  
Chairman

Professor Freda Briggs  
Member

## **BOARD OF ENQUIRY**

### **into past handling of Complaints of sexual abuse in the Anglican Diocese of Brisbane**

## **Report**

### **The Complainant**

**v.**

### **The Respondent**

### **Complaint No. 6**

## **The Complaint**

1. This Complaint was from a parishioner (the Complainant) in a country parish, (the town), the parish priest of which was the Respondent. The Board has decided that in all the circumstances, including that there are matters which do not bear on the subject complaint, the Complainant, his former wife and children, and the Respondent and his wife should not be identified.



## **January 1998**

- 2.1 In January 1998 the Complainant complained to Bishop Noble by phone outlining complaints, but did not identify himself, the Respondent or the parish. Later, by a phone call made to Bishop Raymond Smith, the Complainant had by the end of the conversation identified himself, and that the subject of his complaint was the parish priest of the town.
- 2.2 The Complaint was that the Respondent had written to the Complainant's wife in endearing terms, and the Complainant was affronted by this. The Complainant had other suspicions with respect to the relationship between the Respondent and the Complainant's wife. The Board is concerned only with the issue of the writings of the Respondent.

## **The Interview**

- 3.1 On 19 January 1998 Bishop Smith visited the town to conduct interviews with the Complainant and the Respondent. The interviews took place in a motel. There has been criticism made of the selection of a motel for this purpose.

- 3.2 It was stated by a Bishop,

*"I believe a motel room is a totally inappropriate place for any Bishop to conduct any sort of interview."*

- 3.3 Dr Hollingworth stated, through his Solicitor:

*“That he understands that business and similar meetings are often held in hotel and motel accommodation where the convenor is travelling away from their usual office. Bishop Smith reasonably believed that it was important to meet with the Respondent on neutral ground and that in the town there were very few places where he could have such a meeting in discreet circumstances without unwarranted attention by others. Accordingly, Dr Hollingworth suggests that, while not ideal, it was not inappropriate for Bishop Smith to interview the Complainant and the Respondent in a motel room. He accepts that convening a meeting in such accommodation, particularly with a member of the opposite sex, may be ill advised in such circumstances. However Dr Hollingworth does not consider, on the basis of the facts of which he is aware, that this can necessarily be said in this case. Dr Hollingworth stresses, however, that this is not to say that he either endorses or disapproves of other aspects of the conduct of that interview. That is a matter for consideration by the Board and on which he is unable to comment.”*

3.4 The Board, in the circumstances does not consider the criticism justified. There were good reasons so as to preserve the anonymity of the Complainant and the Respondent for a meeting to be held other than, for instance, on church property. It is common for commercial and professional conferences to take place in hotel and motel rooms.

4.1 In an internal memo of 21<sup>st</sup> January 1998 Bishop Smith noted that at 6.00 p.m. he had an interview with the Respondent.

#### **6pm interview with the Complainant,**

*“I advised the Complainant that our interview would be for forty five minutes. At that stage I would ask him to leave so that I might talk to the Respondent at 7.00 p.m. for fifteen minutes. I asked the Respondent to return at 7.15 p.m.*

*The Respondent showed me a card (not certain whether birthday or Christmas) signed by the Respondent. He also showed me an unsigned card and an unsigned letter. The latter card was a statement of love. The letter was one of commitment of love. Both were of a “adolescence style and*

*format". It is my belief that all three documents were written by the one and same person.*

*My interview with the Complainant terminated at 6.45 p.m. At 7.00 p.m. the Respondent came to the unit. I advised him .... (the Complaint) was related to sexual harassment or at the least a complaint that the Respondent had used his position to take advantage of a woman who found herself in a vulnerable situation."*

### **7 pm interview with the Respondent**

*"I advised the Respondent that the Complainant had two avenues open:*

*To make a complaint to the Archbishop and allow the matter to be dealt with by the Archbishop; so far as the Complainant was concerned this avenue was dependent upon the Respondent acknowledging that he was the author of the unsigned card and the unsigned letter.*

*Failing this, the Complainant would probably raise as a matter of protocol related to alleged sexual abuse. I advised the Respondent that knowledge of the situation was "in the community". I further advised the Respondent that I believed the matter had to be taken to its finality, that if he were innocent he had to be cleared so that (the matter) does not hang over his head.*

At 7.15 the Respondent returned to the interview.

*In answer to a question by myself I was advised by the Respondent that his wife knew of the meeting between the Respondent, the Complainant and myself.*

*He raised the initial complaints and asked that we all sign a "confidentiality document" which he had prepared. I informed him that I could not do so, as any matters discussed with me were discussed with the Archbishop, and that I would inform the Archbishop accordingly. The Respondent advised that he could not sign the document as he would be discussing the matter with his wife. The Respondent denied writing the letters. I advised him that he was innocent unless proven guilty, but that if he did write the letters, acknowledgement of the fact would lead to the better process.*

*The Respondent raised the matter of a message "I love you" (AB) being placed on the road outside the town. The Respondent accused the Complainant of this. The Complainant made no comment.*

*The matter that the Complainant and his wife had sought counselling from the Respondent during a crisis in their marriage was raised by the Complainant. He stated that he believed that the Respondent had taken advantage of this situation. The Complainant also complained that the results of a course taken by he and his wife had never been given to them even after they requested the information.*

*The Complainant left the unit at about 7.45 p.m. stating that he would discuss the matter with his wife to see what their next action would be. I continued the interview with the Respondent.*

*The Respondent asked me what I thought he should do. I asked him what he thought he should do. He spoke of his faithful ministry in the town – to which I agreed. He said that he might have to consider returning to secular employment, or that he might have to ask for another appointment. He stated that he was concerned about the community of Anglicans in the town. In response to a question by the Respondent as to what was my opinion, I indicated that I had seen all the documentation, that if the signed card was in fact from the Respondent it was my opinion that the other documents were also from him. However, as he had denied this, that left me in a tension. I also stated that either another person has almost identical handwriting as the Respondent or another person has tried to copy his handwriting. The question is why this should be."*

#### 4.2 On 20<sup>th</sup> of January Bishop Smith:

*"Contacted the Complainant by phone from .... I advised him that the Respondent maintained that he had not sent the unsigned card and letter. The matter was now in the Complainant and his wife's court and that they must decide whether to implement the protocol related to alleged sexual abuse.*

*I once again asked if the Respondent would give me a copy of the signed card, the unsigned card, and the unsigned letter. I am aware that this placed the Respondent in a difficult position as his wife believes that all the items have been destroyed.*

*I also suggested that his wife might give the psychologist permission to inform me of matters which the psychologist believes I ought to be aware."*

5.1 On 7<sup>th</sup> of February 1998 Bishop Smith had been previously advised by the Complainant that he had received a forensic report that the writer of the unsigned letter, the unsigned card, and the Christmas card signed by the Respondent and his wife, was the same person. On that day Bishop Smith had a discussion with the Respondent in the grounds of the church at the town. The Respondent again denied he had written the letter..

5.2 On 11 February 1998 the Respondent wrote to Archbishop Hollingworth, criticising the conduct of the Complainant towards his wife, which it is unnecessary to refer and then wrote,

*" ... The situation with the Complainant's wife is further complicated by the letters which the Complainant claims I have written her. At first my understanding was that these letters contained material of such crudity that they could not have been written by anyone of sound mind. Now I believe that the documents in the Complainant's possession include a simple note of encouragement to his wife, and a Christmas card to the Complainant and his wife from my wife and I. Regardless of what documents the Complainant may have, and what testimony he may have obtained concerning any of them, I will continue absolutely to deny having at any time or in any way made any improper suggestions to the Complainant's wife. To do so as Bishop Smith has pointed out, would have been to take advantage of a time of weakness and vulnerability. ...*

*For this reason, I will not co-operate with any investigation should the Complainant press the matter through the sexual harassment protocols. The Complainant's wife would be right in my view as seeing any such investigation as the church's co-operation with the Complainant in deceiving and humiliating her in an attempt to keep her under control. The point of this process as far as the Complainant is concerned,*

*is to be able to say to his wife "See what happens to your friends when you don't tow the line". . .*

*If this matter were to be pursued to the point where it was causing damage to the church in the west, I would offer my resignation effective from the 13<sup>th</sup> of April. We would simply announce that we had decided to resign for personal reasons. This two month period would enable us to bring our ministry here to a conclusion in a way that encouraged further growth and involvement by local people, and you to begin the process of finding someone new. Naturally my hope and prayer is that this will not be necessary. If it is necessary I would hope in the circumstances the church would be fair minded enough to provide us with the means to settle into a new home and new employment.*

*Although at time we have had disagreements over particular issues, I have always admired your clear thinking, your commitment to justice and your capable leadership. I certainly feel no ill will in this matter towards you or Bishop Smith, and will continue to pray for you in your very demanding ministry."*

6.1 On 27 February 1998 Bishop Smith read over to the Respondent a letter as follows:

"I write at the request of the Archbishop in response to your undated letter marked "Private and Confidential". He has asked me to advise you of the following:

1. *The Archbishop will accept your resignation.*
2. *Your resignation should take effect on or before the 30<sup>th</sup> of April 1998.*
3. *The Archbishop would accept your resignation if you indicated the grounds were so that you could be closer to Brisbane to assist your wife and yourself during the IVF program; or for the reason of stress or illness.*
4. *The Archbishop wishes to advise at this stage there are no vacancies in the metropolitan area which would be suitable for your ministry.*

*The Archbishop will await your response at your earliest convenience."*

6.2 It was appropriate to ask the Respondent to resign for a reason different and less damning than the real reason. In the circumstances, including the protestations by the Respondent of his innocence, and his statement that “we had decided to resign for personal reasons”, the proposed invitation was a pragmatic solution to the essential problem, namely to have the Respondent and his wife leave the parish, and thus, end the relationship between the Respondent and the Complainant’s wife. It is common for people to be given the opportunity to resign, rather than to be dismissed, and to give euphemistic reasons for the resignation.

7.1 Subsequently the Respondent wrote to Dr Hollingworth, again criticising the attitude of the Complainant to his wife, and to the Respondent, and then stating,

*“If it is not possible for me to be moved to another region in the diocese then my offer of resignation as from the 13<sup>th</sup> of April will become definite. Please advise as soon as possible, so that, if necessary, I may begin the process of seeking alternative employment.”*

8.1 On 25 February 1998 the Complainant wrote to Dr Hollingworth criticising the Respondent, and concluding,

*“I enclose the letters and documents discussed with the Bishop for your viewing. The name has been removed (to protect my wife) but the point is that he breached priest/parishioner’s confidences over a personal problem that my wife was discussing with him to satisfy his own lust.”*

8.2 Whilst Dr Hollingworth expressed some doubt that he had received all the documents, it seems clear he had received all. Set out are

copies of three documents, the first is a card (Q 2) with handwriting addressed to a person whose name had been removed by the Complainant. The text of the handwritten message was,

*"I can't tell you how often  
I think of you, and how much I miss you  
I love you! xxx  
xxxx"*

8.3 The next document is a letter (Q1) which reads:

*"To my darling (name deleted)  
How much I love, adore, want, need you! It's almost worship-  
sometimes I think you are so beautiful so magnificent I just  
want to bow down and kiss your feet. When I hold and touch  
you, you  
are like a goddess to me.  
I would never have thought it was possible to  
feel both contented and excited at the same  
time – but that's exactly how I feel when I'm  
with you. Being close to you means so much to  
me! (Name deleted)  
Don't feel under pressure to make time to  
be with me. I know hard and how confusing,  
things are for you. Every moment I have with  
you is precious and I can never get enough  
of you. But I have no right to ask  
anything of you, so every word from you, every touch,  
every moment with you is,  
like a precious gift. I am so thankful for you  
I love you always  
xxxxxxxxxx "*

8.4 The other document (S1) is a card which contains the writing:

*"To our very dear friend (name deleted)  
Happy Birthday!  
May this year bring new hopes and happiness.  
Best wishes (names deleted)"*

8.5 The Complainant contends that these documents were shown to the Respondent at the motel. The Respondent has always denied this.



He says that when the Board forwarded him the copy of the letters, this was the first time he had seen them. The Respondent has declined to admit or deny whether he wrote the letters. The Board considers that it is immaterial whether the Respondent saw the letters at any time before the Board forwarded them to him.

8.6 The crucial issue is whether the Respondent was the writer. Handwritten letters which the Respondent wrote to Archbishop Hollingworth (e.g. the letter of 29 April) appear to be the same writing as is on the cards and the letters referred to above.

9.1 Mr John Heath of “John Heath Document Consultancies” was retained by the Complainant to provide expert opinion in relation to the handwriting. In a letter of 6 February 1998 Mr Heath states his instructions were to,

*“Carry out an examination of the questioned handwriting present on documents Q1 and Q2 together with the specimen handwriting as contained within the document S1.”*

(Q1 and Q2 are the two letters referred to above, namely one commencing “*To my darling*” and the other one commencing “*(Name deleted) I can't tell you . . .*” S1 is the card from the Respondent and his wife.)

The letter continues:

*“As a result of my examination of both questioned and specimen writings, I have formed the following conclusions:*

- *The questioned writings of documents number Q and Q2 have been written by the one writer.*
- *The questioned writing as contained on the documents Q1 and Q2 has been written by the author of the specimen writing as contained on S1.*

*The opinions expressed in this instance are **definitive opinions**. This is the highest degree of confidence expressed by document examiners in the comparison of handwriting.*

#### *Comments/Observations*

*The questioned handwriting on Q1, appears fluent and natural in completion, notwithstanding the photocopy nature of its presentation.*

*It appears very individual and is entirely consistent with the original handwriting of Q2 in many features of construction and appearance.*

*In my opinion, there is an abundance of evidence present to suggest that the questioned writings (original and photocopy) were written by the author of the specimen handwriting, and a singular lack of evidence to suggest that another writer was responsible.*

*If I can assist you further in this or indeed any other matter please do not hesitate to contact me.”*

9.2 The Board has sought further handwriting expert evidence, to determine whether the writing on the document Q2, is the same as that in the Respondent’s handwritten letter to Dr Hollingworth of 29 April.

9.3 Set out is the report,

*“Scientific Document Services Pty Ltd report under the hand of Mr Neil Holland Dip. app. Chem. B. App. CSI (Chem) MRACI C. Chem. by report dated 12 February 2003 states as follows:*

*“On the 29<sup>th</sup> January 2003 I received . . . the following list of documents for examination:*

1. *A photo copy of a facsimile copy of a hand written letter commencing “Dear Archbishop, Thank you . . .” and facsimile dated “29-Apr-98”.*
2. *A photo copy of a facsimile copy of a hand written letter commencing “To my darling . . .” and facsimile dated . . . February 25 1998”*

*(The Board points out that this document is Q1 in paragraph 8.2 above.)*

*As a result of my examination of these documents it is my opinion that:*

1. *The documents items 1 and 2 are photo copies of facsimile documents and this has hindered the examination. However an examination of the documents was undertaken and the following was observed:*
  - (a) *A comparison of hand written entries written on the questioned document item 1 revealed many similarities and letter construction, style, size and lay out to the hand written entries written on the control document item 2.*
  - (b) *These similarities are of such a nature that it is highly probable that the writer of the document item 2 wrote the hand written entries on the document item 1.*
2. *This is only a preliminary examination undertaken on copies and before a definitive opinion can be given the original documents should be obtained. Also additional handwriting standards of the writer of the control document item 2. should also be obtained. “*

9.4 The Board is satisfied that the Respondent was the author of the documents Q1, Q2 and S1 forwarded to the Complainant’s wife, and from whom the Complainant obtained them.

10.1 Dr Hollingworth's Solicitors write that because there is no proof or allegation of sexual contact by the Respondent whether the writing of the letters "falls within the Board's term of reference"

10.2 To like effect the Respondent said of the document which had been forwarded to him,

*"I now comprehend why this material was not made available to me at the time. As I understand it, there has never been any suggestion of inappropriate physical contact between the Complainant's wife and myself. The substance of the accusation against me was then, in essence, that I had had a correspondence with an adult woman which contains no sexual references, and to which she never objected.*

*I took this matter extremely seriously at the time, believing that although I was not permitted to see the correspondence, it must contain some serious substantive matter. I resigned from my parish, and have suffered what I believe to have been a deliberate programme of persecution and humiliation. A more appropriate course, I now believe, would have been to have told the Bishop to mind his own business.*

*I still believe that if there had been a genuine goodwill and desire to resolve this matter, it could have been resolved in five minutes, by simply showing me the correspondence, and allowing me to say, 'Yes I wrote that' 'No I did not write that' as the case may be. If there had been anything substantive in the letters, and I had been asked to provide a genuine sample of my own handwriting for comparison purposes I would certainly have done so."*

10.3 Sexual abuse is defined in the Board's terms of reference namely,

*"Sexual abuse or misconduct' includes any form of criminal sexual assault, sexual harassment **or other conduct of a sexual nature** that is inconsistent with the public vows, integrity of the ministerial relationship, duties or professional responsibilities of a church person." (Emphasis supplied)*

10.4 A letter by a man to a woman professing that he loves her , is “*excited by her touch*” and so on, is conduct of a sexual nature. Indeed in the same way as a proposal of marriage, it connotes sexual communion. The writing of a love letter by a priest to the wife of a parishioner is conduct of sexual nature “inconsistent with the public vow, integrity of the ministerial relativity duties or responsibility of a church person”, and this is aggravated as was the case here and known to the Respondent, the Respondent’s marriage was under stress.

11.1 On 19 of March 1998, the Respondent wrote to Dr Hollingworth stating:

*“I have before me a letter from Bishop Smith requesting my resignation. A copy of this letter has no doubt been forwarded to you.*

*I will accede to Bishop Smith’s request, and offer my resignation effective from Monday May 4<sup>th</sup>.*

*In my earlier letters I offered to resign as from the 13<sup>th</sup> of April if the matters I raised could not be resolved without harm to the church or if I was in any doubt about my wife’s or my safety if we remained in the town. However, that date is only three weeks away and it is unlikely that I could find alternative employment or accommodation within that time.*

*I accept this turn of events without resentment and confidence in God’s continuing purpose in my life. In some senses my return to secular employment is almost a relief. None the less I must express my disappointment with the way this matter was handled.*

*Bishop Smith claims that there are irreconcilable divisions between me and sections of the community. This is nonsense. There are certainly grave difficulties between me and the Complainant. The Complainant is a violent and vindictive man. I am not the only person who knows this and the Complainant’s position in this community has become so*

*difficult that he has decided to leave after Easter. He will no longer be a threat either to my wife and I or to the church.*

*His wife is going to move with him and I feel deeply for her as she has separated from a hard won support network in the town ...”*

(The letter then deals with the achievements which the Respondent states have been made in the parish since he had the ministry). . .

*“ ... The reason I offer my resignation is this. Not because I think I have done anything wrong – I have not. Nor because I think the church would be harmed by my staying – it will be harmed by my going. Certainly not for the reasons Bishop Smith suggests would be “acceptable”. But because, given the way this has been handled, I would find it very difficult again to reveal to him any matters of ministry involving others or to confide any personal matters to him.*

I will announce my resignation this Sunday, and have some truthful and personal reasons that I will give to the congregation so as to avoid the possibility of any conflict between this congregation and the wider church. The real reasons I have confided to my parish council and to a few close non church friends. The reaction has universally been dismay and disbelief. Suggestions that there has been any sort of liaison between the Complainant’s wife and I are so ludicrous given that what my wife and I are doing at the moment and the circumstances of the Complainant’s own life that they would be hilarious if they were not causing so much pain. ...”

11.2 On 26 March 1998 the Archbishop replied to the Respondent,

stating:

*“This is to acknowledge your letter of 19<sup>th</sup> March which surprisingly was not marked “confidential”. In that letter you offer to resign from the parish of the town effective from Monday 4 May. As you would expect, I have now discussed the contents of your letter in confidence with Bishop Smith and I make the following observations which I ask you to consider very carefully.*

*Firstly, this is not a letter of resignation, but an offer to do so coupled with certain self justifications. In the process you make allegations about the church and its hierarchy and it’s lack of care. You appear to be doing this in a way that will*

*shore up your own position of righteousness in the matter. Furthermore, you have done it by alleging that Bishop Smith has betrayed confidences, which I am more than satisfied has no substance whatever. Bishop Smith has been over all the conversations he has had with you and others and I believe he has acted with care and discretion together with a desire to uncover the truth of this complicated situation.*

*Secondly I want to suggest that your actions in response to my request have been highly unusual to say the least. You have written me a letter offering to resign and then announcing to the parish forthwith that you have resigned and that you intend to live in the town and buy a house there. The best construction one could put on these actions is that you are being naïve to think that you could resign in such circumstances, in the midst of the innuendo around the town, set aside your priestly ministry and live as a lay person in a town of three thousand five hundred people, imagining that you could participate normally in the life of the church. Given your high profile leadership and popularity in the town such an action would be particularly unfair to whoever took your place as priest in charge. I therefore cannot accept your resignation in the terms and circumstances that you have outlined in your letter. I have offered you an honourable way out, which is to resign and move to Brisbane to gain better access to more effective IVF treatment for your wife and yourself. This is a perfectly acceptable explanation, but you seem to have chosen a course which can only generate more controversy and speculation around the town. I am prepared to accept your resignation on the terms I outlined, but not on the terms indicated in your letter.*

*Thirdly, I must say that we have sufficient evidence to show that you have committed a serious pastoral indiscretion in relation to a vulnerable parishioner. Such things happen in ministry from time to time and are dealt with through the church's normal pastoral and disciplinary procedures. All it would have taken in this case was for you to admit to what happened, seek forgiveness and absolution and then apologise to the parties concerned. That would probably have been the end of the matter, but instead you have chosen to deny the written evidence that was put before you. Such a course of action is still open to you and I would ask you seriously to consider it. Your continual presence in the town will be construed as a way of seeking to embarrass the church you seek to serve. You have threatened legal action for defamation if certain matters are publicly divulged, knowing full well that neither Bishop Smith nor I are ever likely to make any public statement about you and your behaviour. You would know that we will remain silent on the matter while for*

*your part you can choose to say whatever you wish about the church and its alleged short-comings as a means of protecting your own position. In conclusion . . . I have to express my deepest disappointment in you. Notwithstanding your many gifts and talents you have let me down. ... I write this letter to you with the greatest of difficulty and in strict confidence as your Father in God. I do not want to receive your resignation and I do not want you to leave the parish, but I really have no alternative if you continue a course of denying any wrong doing or impropriety of pastoral conduct. It may still just be possible to deal with this vexed matter, but it really lies with you to be honest about certain matters, confess them and seek absolution.*

*I await your urgent response and I counsel you to make no further public statements about your intentions for the future until such matters have been more satisfactorily resolved."*

11.3 On the 30<sup>th</sup> of March 1998 the Respondent replied to the

Archbishop's letter of 26 March. He wrote, inter alia:

*"Similarly with your suggestion that you do not wish me to leave (this parish) or full time ministry.*

*I have written to you three times (now four) over the last several weeks seeking your advice, and trying to clarify the situation from my point of view. I did not hear from you until late last week, and after I had already told my people that I would be leaving.*

*If I receive a letter asking me to resign, giving me a date from which this resignation should be effective, and a list of "acceptable" reasons I might wish to offer for doing so, I can only assume that you do, in fact, wish me to resign. I understood from Bishop Smith that there was no possibility of continuing in ministry in the town. Now to be told effectively "Now look we didn't really want you to go" is, well, I don't know how to say it politely, what I think about that.*

*Despite your being "more than satisfied" that Bishop Smith has not broken any pastoral confidences in this matter, I am still convinced that this did occur. ...*

*This is not a matter of finding excuses or trying to embarrass the church. You suggest that while I know very well that you and Bishop Smith will say nothing to embarrass me, I am free to say anything I like. It seems to me that the reverse is in fact the case; that anything will be said about me to justify the*



*process (or lack of it) which has led to my being asked to resign, while I am in the position where because of my concern for the church and for this community, I will not say anything to defend myself.*

*You certainly have no reason to think that I would do anything to harm the church. I have always expressed any concerns I may have had on issues to you directly, and then supported you publicly, regardless of my own opinion. In this case, I had perfectly sensible and true personal and family reasons for resigning from full time ministry and staying in the town. As far as I was concerned, having expressed my disappointment to you, I would simply have left the matter to you without saying anything to anyone else. ...*

*The most that could have been said, if anything needed to be said at all other than that I had decided to resign for personal and family reasons, was that there was a suggestion that there had been some inappropriate correspondence between myself and a female parishioner. In the interests of fairness, I would hope it would also have been added that I had consistently denied having written to any parishioner anything that could be construed as improper, and that I have not been given the opportunity to see the correspondence in question. If it was further added that the correspondence had been provided to you by a cunning, vindictive and abusive husband, who had previously announced his intention to get rid of me, and who had been at pains to conceal from his wife what he had done, the situation would be even clearer.*

*... your statement that this matter has been handled with care and discretion seems simply bizarre. It is difficult to imagine how it could have been handled with less care and discretion.*

*Perhaps this will make clear why I am quite definite about my resignation. I would not feel comfortable discussing either pastoral or personal matters with Bishop Smith, and it would therefore be inappropriate to continue in ministry under his leadership. My wife and I do have genuine reasons for wanting to stay in the town, but if I were offered a parish in another region of the diocese I would certainly consider this. . . Finally, I am not insensitive to the potential difficulties for any new priest that might be caused by our remaining in the town. I have already indicated to my people that I intend fully to support anyone who is called to this parish and that I expect them to do the same. I know there will be people who will still come to me for advice, and perhaps with comments about any new ministry. I also think I have enough honesty and responsibility to listen carefully and then gently redirect them to their priest."*

11.4 On 1 April 1998 Dr Hollingworth replied to the Respondent, stating, *inter alia*:

*“Firstly, there may be some pattern of events in your past that would cause me to advise you to seek counselling of a specialist kind, either to lay to rest these difficulties or, if need be, to assist in coming to terms with them. Whatever the truth of various statements and allegations made by people, there is sufficient reason to say that in some specific instances the way you develop relationships with some people may cause you to get into difficulty. All priests, by the nature of their office, carry a special pastoral responsibility in relation to the members of their flock, and whatever the truth of this present allegation, it has now caused some serious difficulty for the exercise of your ministry in the town.*

*I sincerely regret the need for your resignation, but I also regret the way in which you have gone about the matter. You have put everybody in an impossible position by writing to me offering to resign and before there has been any further opportunity to discuss the future, you have announced to the parish that you will be resigning, and residing in the town, effectively as a lay person. In any situation . . . that is an extraordinary action to take, and one which some would describe as manipulative.*

*You ask about the possibility of another appointment, and my answer is that we must first of all work through what has happened in the town and try to get to the bottom of the matter, for I cannot responsibly and in conscience appoint you somewhere else knowing certain things and having received certain written allegations about you. . . With regard to any rumours that fellow clergy may have heard, I can assure you that neither Bishop Smith nor I have said anything and it has most likely come from the gossip that is around the town. . . whatever personal reason there may be for you and your wife wishing to stay in the town, I would urge you to think again and consider the serious ramifications. Of course I have no means of stopping you from doing that, because if and when you resign, you are a free agent to do whatever you wish. I would simply ask you to think very carefully about what damage this may do to the body of Christ.*

*In conclusion . . . I am not making any inference which seeks to “search for potential ammunition”. That is not the point at all. Rather, there are serious ethical questions of pastoral relationship which have not been satisfactorily resolved, and*

*they are to do with inappropriate pastoral behaviour which has become subject to a certain measure of public comment. It is because that matter has not been set to rest either by you, the Complainant's wife or the Complainant that things stand where they do at the present time. I have asked you to be really honest about any indiscretions that may have occurred as a first step towards achieving some reconciliation. For your part you have responded by seeking to place the blame somewhere else and to justify your own actions. I await your next letter."*

11.5 On 29 April 1998 the Respondent wrote to Dr Hollingworth stating:

*"Just a brief note to confirm that this coming Sunday will be my last as parish priest in the town.*

*As you know we are staying in the town. We have made some great friends here over the last two years, and still have a sense that this is where God wants us to be. My wife and I go this afternoon to sign the papers to purchase a house here. . . I have been offered some contract work for a few weeks after May 4<sup>th</sup> working with a local community group to help them develop a management plan. After that there are a couple of options in counselling or community development. Most of these involve travel throughout the region, so we will be able to keep up our friendships with church people and others throughout the south west.*

*We want to give the parish the chance to develop some new directions, and so will probably worship with both the Catholics and the Uniting Church over the next month or so. Please keep the parish in your prayers during this time of transition. We expect to continue our commitment to our quiet pray group and the Wednesday night bible study and fellowship group. There are plans for a monthly ecumenical service. I have been invited to participate in this, and will consider this carefully when the time comes.*

*We will certainly keep you and Bishop Smith in our prayers, and our parish nominators as they try to find someone who will continue not only the parishes' ministry to families and growing financial stability, but also a deepening sense of mission and unity of purpose.*

*Thank you for your friendship and prayers and may God bless and keep you."*

11.6 On 23<sup>rd</sup> April 1998 Dr Hollingworth wrote to the Respondent, stating:

*"I refer to your most recent undated letter where you asked whether you might be able to continue to exercise ministry as priest in charge of the town.*

*Before I can consider that request I must see some signs of penance from you about your behaviour as a priest, particularly in relation to a family that has now left the parish, presumably as a direct result of what has happened. Whatever the explanations you might offer, I am still to be satisfied with all aspects of your behaviour which would appear to be not as blameless as you have made out in previous correspondence.*

*In other words, the problem has not gone away just because the family have left and I do have other written correspondence which would further cause me concerns about serious pastoral indiscretion on your part. However plausible your arguments may be and however much you might try to turn the blame upon your Bishop and others, I am sorry I am not persuaded. If you wish to pursue the matter further, and I am willing and desirous for you to do so, then you must come to see me in Brisbane as soon as possible and do so willing to be open, frank and honest about all aspects of this sad incident. Meanwhile I await a change of heart on your part. It is only when that occurs and I am convinced about your side of the story that I can consider reversing the present situation. I am aware that many parishioners want you to stay and I have had correspondence to that effect. I am pleased because that is an affirmation of the good aspects of your ministry. I must however, deal with the other wise before I can accede to those requests."*

- 11.7 That letter crossed with the handwritten letter which the Respondent had written on April 29. (This was the letter the Board submitted for handwriting analysis.) The letter read:

*"Thank you for your letter which arrived this morning and for your fax.*

*It would be silly for me to go over again the things I have already written. I will send with this note a copy of a letter I posted to you yesterday.*

*Please be assured that I am not interested in blaming anyone else for anything that has occurred. I am quite certain God has a hand in all this and that there is a plan and purpose here somewhere, though it is not yet clear what it is."*

12.1 All the above correspondence was included in or referred to in the draft preliminary findings. There appears to be no contest as to its accuracy save that the Respondent denies that he was shown the documents Q1, Q2 and S1. The Board forwarded copies of those documents to the Respondent, inviting him to say whether or not it was his handwriting on the document Q1.

12.2 Relevantly and without detailing the correspondence between the Board, the Complainant, Bishop Smith, The Respondent, the Bishop of the Respondent's current Diocese, and Dr Hollingworth, the following extract from a letter of the Respondent is set out.

*"I am thankful for your clarification of the lack of confidentiality in relation to correspondence with the Board. This leaves me, however, with one of the same difficulties I had with Bishop Smith. Even if the allegations made by the Complainant were true, that is, I had formed a friendship with his wife, and there had been some correspondence between us which, on reflection, was inappropriate, it would not be possible for me to admit to this (even allowing it to be anyone else's business), knowing that that information would be passed on to a vindictive and abusive husband."*

12.3 Since the above events, the Complainant and his wife have divorced. It has been pointed out on numerous occasions that the Complainant's wife has never made any complaint. In the context of considering the handling of the complaint this is irrelevant. The Board finds that the view of Bishop Smith and Dr Hollingworth that the letter written by the Respondent to the Complainant's wife, was misconduct, which justified action to obtain the Respondent's

resignation, was correct. Unfortunately, and ironically, that resignation achieved no practical benefit for the Complainant. This was because the Complainant prior to the resignation had left the town

- 12.4 The Board does not propose to make any further judgements on the way in which this matter was handled, save to say that there was no conduct which the Board has perceived, which it was not reasonably open for an Archbishop and a Bishop in the position of Dr Hollingworth and Bishop Smith to have taken. There may have been better or other ways of handling the situation, but they are matters of judgement. This includes the desirability of the Diocese offering counselling to the Complainant. The Board asked Dr Hollingworth and Bishop Smith why counselling was not offered.

- 13.1 Dr Hollingworth's Solicitors wrote:

*"Dr Hollingworth's recollection is that he did discuss with Bishop Smith the prospect of counselling but that they concluded that this was not only not necessary but also inappropriate. In particular, it is relevant that the Complainant's wife herself had never made any complaint against the Respondent or indicated any desire for intervention on the part of the church. Moreover, it was considered that counselling could not be satisfactorily arranged in the town and, soon after, the Complainant and his wife relocated [as Dr Hollingworth recollects] to [another town]."*

*Finally it should be noted, in the terms of the Board's questions that it would never have been possible for the church to 'ensure' that the Complainant and his wife received counselling. It cannot now be known whether either or both the Complainant and his wife would have accepted any offer*

*of counselling had it been made but, at the time, Dr Hollingworth believed that neither would do so.”*

13.2 With respect to the issue of counselling, Bishop Smith said that:

*“Today an offer of counselling would have been made immediately. The Complainant took a position on the whole episode. Contact was attempted with the Complainant, but he had left the district.”*

14.1 Once the Respondent’s resignation had occurred, the relevant handling of the complaint was concluded. However, a year later the Complainant strongly criticised the action which had been taken, and whilst this does not change the view which the Board takes as to the handling of the complaint in fairness to the Complainant reference is made to the following.

#### **14 April 1999**

14.2 The Archbishop was advised that the Complainant was “obviously still upset” over the events in the town, and says his business out there which he still owns but which has been run by a manager has gone down hill because he unable to live there. ...

#### **9 May 1999**

14.3 A Bishop of another Diocese wrote to the Archbishop stating that,

*“I am writing to tell you that the parish of ... has nominated to me the Respondent presentation to the living in that parish.*

*I realise that he does not hold your licence, but I felt it was a courtesy to let you know what was happening.*

*The Respondent has been in touch with me, and after a time to consider the matter and pray about it, he has decided that*

*he will accept the offer. It may well be that he and his wife will be able to come to the parish in July.*

*Local investigation of him gave me to understand that the parish will be very happy to have him, so mindful of the difficulties that you have shared with me, it is my hope that he comes with your blessing.”*

- 14.4 This was a reference to discussions which Dr Hollingworth had with that Bishop dealing inter alia with respect to the Respondent’s participation in the events referred to above.
- 15.1 The Complainant wrote an angry letter to the Archbishop complaining that the Church had “done a cover up over this person” (the Respondent) and had not assisted the Complainant and his wife and made numerous other complaints.

### **1 June 1999**

- 15.2 The Archbishop responded stating,

*“... I have decided to send you a copy of the memo with Bishop Smith’s agreement of the diary records he kept in relation to the matters you have raised in your most recent letter.*

*Whatever feelings you may have about events and their outcome, I can assure you that the greatest of care and attention was taken to your complaint, the Priest concerned handed back his licence to me and resigned from the parish, even though he disputed your allegations. He is now about to leave the area and live elsewhere in Australia. I therefore do not believe that anything more can be done as the Church has acted promptly and decisively, indeed to the extent that much criticism has been levelled at the Church and the Archbishop over the resignation of the Priest. However I understand your concerns and I can only counsel you to put them behind you and move on in a spirit of reconciliation. Nothing can be gained now from harbouring hurts from the past and I hope*



*that you can accept my words of advice to you in these difficult times. ... “*

## **16 June 1999**

15.3 The Complainant responded to the Archbishop's letter with a further letter stating inter alia.

*“Thank you for the response to my previous letter. I reluctantly respond on a “without prejudice” basis as I believe that you and the Bishops have missed the point of my letter altogether.*

*I do not see that you can possibly understand our position. You obviously believe that simply by writing to me and saying “I can only counsel you to put them (my concerns) behind you and move on in a christian spirit of reconciliation” fixes everything. Well how wrong you are. I am not harbouring hurts of the past but of the present.*

*The actions of this man – if you can call him that and the subsequent actions of the Church have totally destroyed fifty years of belief in a christian life and upbringing from my education to being a server at St Augustins and later as a liturgical assistant in the town. All you can say is to put it behind me. Where is the reconciliation in this. This is what I am currently trying to grapple with. Never did the Church offer to help us, never did they ask after our welfare nor did they offer us counselling in this matter.*

*I do not understand your comment that the Church had much criticism levelled at it and at you as well. If the truth had been told in the first instance to the parishioners, then you would have had that problem – would you.*

*You counsel me to put it behind me and this I am talking with my counsellor about and no doubt one day I will. But I cannot forgive the Church for not taking a more positive response to this matter. The part that troubles me most is that the Church had a responsibility to help this man and to take steps that would ensure that the situation did not arise again. The Church sidestepped the issue by accepting his resignation and let him be a free man and they did not accept their responsibility in this matter. I am also concerned that his next prey may not be as strong as we were to fight and resist him. What if the next person is not as strong. What if he gets his*

*way and that person cannot handle the situation. I do not want someone done (sic) the track. Ask him why I did nothing about it when I could have. I feel my actions could possibly save lives in the long run.*

*I know that you obviously were in contact with him and helped him with his personal and priestly life but we were ignored and no help was offered or given. You have the evidence yet you say you disputed the allegations. I do not understand how a priest can sit there and just lie to you and the Bishop.*

*Your letter is most disturbing because it does not really paint a true picture. It is a version that obviously is set out to make the records look O.K. It protects this man and his future rather than recording the facts as they are and that the Church we feel has something to hide as has been the history of churches rather than racing up to reality.*

*You did not answer any of my questions asked in the main, to specifically try to help me understand this situation so that perhaps one day I could put it behind me. We did an "enrich" program with this man. He has received the answer back which he admitted to me and I have now asked three times for these to be given to us. They still have not and I am tired of asking. I want them back and I want them back in seven days. He told the Bishop he had them. The Bishop asked for them, but where are.*

*It appears that the Church wants it all their way. Two complaints were made to it. The Bishop investigated those complaints and I was made to sit in front of this .... man and make the accusations face to face. I let the Bishop read the letters. I let him read the handwriting report.... What else do you need to do. I am going to suggest that you and the Church needs to wake up as other Churches have. You need to acknowledge the problem. You need to help the victims and last of all you should not hide behind close doors hoping it will go away because it doesn't.*

*I am deeply troubled by this and the fact that it has just come to light and he is going to recommence preaching again. He is not in your diocese so I suppose it does not worry you. I am continuing to get counselling.*

*It is not easy to put this injustice behind me. The Church has not given me anything that I would call reconciliation in any spirit let alone a christian one. My hurts will be harboured until justice is done and the Church faces up to its responsibility ...*

*The town has been neglected in these matters. The Church hope the problem will go away but it doesn't and it wont until you and your Bishops are truthful.*

*Unfortunately I see you all as poor representatives of the Church. Your ranks have obviously closed and you cannot face the truth.*

*Yes I am bitter that you have allowed such an important issue as this to be brushed aside. You and you alone have fostered this bitterness.*

*Perhaps you would attend a meeting in the town and the matter could be put to the parish council and then the parishioners to set the matter right."*

## **29 June 1999**

15.4 Dr Hollingworth responded stating inter alia,

*"I can only respond to you by saying that some of the allegations you make about the priest concerned in our correspondence go far beyond the complaint that I have received about his pastoral conduct in the sense that you convey the impression that people in the community are at risk.*

*I am bound to say that I have had no information or evidence to that effect and if there is something that I do not know about, then you must explain it to me. Otherwise you will be unwise to make allegations of that kind.*

*I understand the hurt you feel and I am saddened that his immature conduct has caused such hurt to you and your family. But I cannot agree with you when you suggested the Church did nothing and turned its back on the problem. Quite the contrary, Bishop Raymond, on my direction, acted decisively, there was a resignation and my license to minister was withdrawn."*

## **9 July 1999**

15.5 The complainant rang Dr Hollingworth's office and informed his secretary of his response to the most recent letter from the Dr

Hollingworth. Dr Hollingworth wrote to the Complainant on 9 July 1999. The letter concluded,

*"I'm not sure what else I can do, unless you can come forward with any further evidence which can be corroborated. Throughout all these proceedings, your wife has been silent on the matter and so we have only your word and your interpretation of events. I will make one further offer, which is to invite both of you to come and meet with me and to say whatever else can be said. But it is difficult for me to see what else I can do in the absence of any hard evidence. The only other way the matter can be dealt with is for his diocesan bishop to keep a close eye upon all his activities and I am confident that is exactly what will happen. If you wish to make an appointment on behalf of both of you could you please ring my office." (Confidential Document 19)*

15.6 That invitation was apparently not accepted.

### **Findings in Respect of the Handling of the Complaint**

16.1 Whilst the Board readily recognises the great hurt and concern which the Complainant has apparently experienced, and so it can be inferred his wife, the Board does not find that there was any failure to act fairly, reasonably and appropriately by the persons in authority namely Dr Hollingworth, Bishop Smith and Bishop Noble.

16.2 Once Dr Hollingworth had received the documents and the handwriting reports on 25 February, he forthwith instructed Bishop Smith to seek the Respondent's resignation. This Bishop Smith did on 27 February. This prompt reaction clearly reflected the disapproval of the Archbishop and Bishop Smith at the conduct of the Respondent.

- 16.3 As appears from subsequent correspondence, the Respondent sought to continue in the ministry, but this was refused. It was refused on the basis that unless the Archbishop saw signs of reformation and remorse in the Respondent, he did not consider him fit to remain in the ministry in the Diocese of Brisbane.
- 16.4 A year later the Complainant contended that the Respondent should have been kept in the ministry and transferred to another place rather than having him resign. With respect this confuses two matters. First, whilst the Archbishop had no evidence other than that the Respondent in writing the letter had acted indiscreetly and inconsistently with his pastoral duty, that, without more, was sufficient for him to seek the Respondent's resignation. To have had the Respondent remain in the ministry, and be transferred to another parish, would be engaging in a practice which has been much criticised, and generally justly so. No doubt Dr Hollingworth assumed that the Respondent would leave the town. In the event the Respondent stayed in the town and it was not until a year later he went to another diocese, where he presently remains.

The Board has a great deal of sympathy for the Complainant. The Board is not required to, nor can it make a judgment as to the reason for the break down of the Complainant's marriage. It is accordingly not appropriate to refer to the respective contentions of the

Complainant and the Respondent in relation to that. These were not matters, which in distinction to the issue of the letters, which were “handled” by Dr Hollingworth and Bishop Smith.

Dated the twenty-second day of April, 2003

Peter O’Callaghan Q.C.  
Chairman

Professor Freda Briggs  
Member

# **BOARD OF ENQUIRY**

**into past handling of Complaints  
of sexual abuse in the Anglican  
Diocese of Brisbane**

## **Report**

### **Complainant**

**v.**

### **Respondent**

#### **Complaint No. 7**

- 1.1 In dealing with this complaint the Board considers that the Complainant and the Respondent should not be identified. Notwithstanding that the complaint has been given some publicity, it was not identified in the terms of reference. The complaint is of alleged sexual abuse by the Respondent of the Complainant when she was a seventeen year old University student and the Respondent was employed by that University. At the time the alleged abuse took place, the Respondent was acting in his capacity as an employee of the University. The complaint was made to the University, to the police, and to the Committee for Complaints of Sexual Abuse (CCSA).

- 1.2 The Respondent has denied the complaint to the police, and to this Board, and no person or body has determined the validity or otherwise of the complaint.
  
- 2.1 The Complainant first complained to the University in November 1996. On 27 April 1997, the University wrote confirming that it had denied liability, and that it regarded the complaint as finalised. On 18 April 1997 the complaint was made to the police. On 5 August 1997 Ms Marilyn Redlich, Chair of CCSA received a detailed complaint.
  
- 2.2 The Committee's proceedings were suspended because of the complaint having been made to the police. On 16 December 1997 the Complainant withdrew her complaint to the police, so that the Committee's investigation could proceed.
  
- 2.3 In summary, there were a series of references to the Committee but there was never an assumption of jurisdiction by the Committee and the Committee did not embark on an investigation of the complaint, nor conduct any hearing pursuant to the relevant provisions of the protocol.
  
- 2.4 The Complainant has seen Dr Hollingworth on at least three occasions and has had considerable discussions with him. Whilst there is some dispute between the Complainant and Dr



Hollingworth as to what took place at these interviews, the Board makes no criticism of Dr Hollingworth.

3.1 The Complainant's fundamental problem in having her complaint dealt with by CCSA is that it does not have jurisdiction. The Respondent, albeit a part time employee of the diocese, was at the time of the alleged abuse, acting in his capacity as an employee of the University. Some of the alleged abuse took place on Church premises, but the diocese had no control of the Respondent, nor was there any pastoral relationship between the Complainant and the Respondent. Thus the CCSA is not empowered to deal with this complaint.

3.2 In finding that CCSA in these circumstances is not empowered to deal with the complaint, the Board relied upon a previous ruling when a complaint was made to CCSA by a person who was sexually abused by his doctor, who also happened to be a priest. The matter was referred for advice to the Chancellor of the diocese, The Honourable Paul de Jersey AC, also the Chief Justice of the Supreme Court of Queensland. His Honour, the Chancellor wrote:

*"You seek my advice on the possible application to a particular case of the sexual abuse protocol.*

*In this case, a medical practitioner, who is also a priest, is the subject of a complaint brought by a patient, but a patient with whom the doctor did not have, at the time, a pastoral relationship. The question is whether the protocol can apply, having regard to the absence of that relationship at the time. The Chair of the CCSA is asserting jurisdiction, at least to the point of offering counselling to the priest.*

*Section 2 of the protocol defines, apparently quite carefully, the only circumstances in which it can apply. Its terms follow as relevant.*

*2. Application of the protocol*

*The protocol applies where: . . .*

- (b) the person against whom the complaint is made (called the Respondent) is:*
  - (i) a person licensed by the Archbishop or*
  - (ii) a person elected or appointed to any office within the church under the Canons or*
  - (iii) a person elected or appointed to any office within the church by a council, board, chapter, commission, committee, parish priest or church warden or*
  - (iv) otherwise a voluntary worker of the church in this diocese and;*
- (c) the person making the complaint (called the Complainant) is:*
  - (ii) a person with whom the Respondent had, at the time of the alleged conduct, a pastoral relationship, involving an obligation in the Respondent to attend to the Complainant's spiritual welfare, or*
  - (iii) a person with whom the Respondent has not had a pastoral relationship but over whom the Respondent has used his or her office to gain advantage or*
  - (iv) a member of the clergy or a member of the laity holding office in the church, notwithstanding the absence of a pastoral relationship."*

*I do not know whether a formal complaint has yet been lodged. That does not matter for the purposes of this advice. I am addressing the short question of whether the absence of the pastoral relationship referred to in clause 2 (c) precludes any application of the protocol.*

*In this case, on the facts presented to me, the complaint does not fall within paragraph (c) above neither (iii) nor (iv) applies. As to (ii), the patient was not, as I understand the facts, "a person with whom (the doctor) had at the time of the alleged conduct a pastoral relationship, involving an obligation in the Respondent to attend to the Complainant's spiritual welfare. On my understanding the Complainant consulted the doctor qua doctor, not as his priest.*

*Of course it may be suggested that a priest carries a persisting pastoral responsibility to anyone with whom he or she may come into contact. But if the protocol were premised on that wide view, why was it considered necessary to state explicitly, in clause 2(c), that at the time of the alleged conduct, a pastoral relationship must have existed. In other words, if the assumption was that a priest would always be subject to such a responsibility in relation to anyone, why state the obvious, in specifying as a pre condition for the application of the protocol, that a pastoral relationship must exist in the particular case. One response may be that the alleged perpetrator need not be a priest – see clause 2 (b) and the existence of a pastoral relationship would not so readily be assumed with, for example, voluntary church workers.*

*But recognising that the operation of the protocol plainly intended to benefit Complainants may also seriously effect the position of Respondents, one should not strain to give it an operation which may be felt unduly wide. The ordinary reader of clause 2 (c) would say that if a Respondent has consulted a doctor, in his or her capacity as a doctor, then notwithstanding that the doctor also happens to be a priest, the relevant relationship between the two would be that of doctor and patient, not the pastoral relationship which binds a priest to a member of his congregation or flock. The terms of (c) are quite specific. It would strain the ordinary construction of the paragraph to conclude that when the patient consulted the doctor, the doctor immediately became subject to a pastoral relationship obliging the doctor to attend to the patient's spiritual welfare. Now the doctor, being a priest, may well for his or her own part probably concede such an obligation, but this protocol, the application of which may have serious consequences for both parties and indeed the church – was I believe, not drafted on that wide ranging basis.*

*As the preface to an earlier edition of the protocol says, its development was prompted by the church's deep concern about the suggested incidents within the church generally of sexual abuse of parishioners by members of the clergy and other church officials. I appreciate that that preface was not included in the document finally adopted by the Archbishop and council, but that form of words does tend to support the view I have expressed as to what was in the mind of those who drafted the protocol. Note the reference to the incidence of abuse "within the church"; I believe*

*that was meant to convey the notion of abuse occurring in the course of church related activities. That aside, I think it inconceivable that this protocol was intended to apply to suggested abuse by a person, who happens to be a priest, but in the course of occupational pursuits entirely unrelated to the church. As in this case, the community provides other mechanisms applicable to such cases, here, a complaint to the Medical Board, which I understand has been made. . . .*

(The Chancellor then dealt with insurance considerations, not applicable to the present case) and concluded:

*“As I advise you the protocol has no application to the case on the facts as presented to me, and the CCSA should desist from any further involvement.”*

3.3 That advice, with which the Board respectfully agrees, is precisely applicable to the position of the Complainant. The Complainant did not have a pastoral relationship with the Respondent, she was the student of the Respondent in his capacity as an employee of the University. If the lecturer acted in such a way as to make his employer liable for his acts, that employer would be the University. Thus the diocese has no power to deal with the complaint against the Respondent.

4.1 The Board finds that the complaint has been handled appropriately, in the sense that the Complainant has no remedy against the Diocese, and CCSA is not empowered to deal with it. Notwithstanding, the absence of power to hear the complaint of the Complainant, without making judgment or comment on her complaint, the Board points to her entitlement as a Parishioner to obtain pastoral assistance from the Diocese, which no doubt will be readily provided.

Dated the twenty-second day of April, 2003

Peter O'Callaghan Q.C.  
Chairman

Professor Freda Briggs  
Member

# **BOARD OF ENQUIRY**

**into past handling of Complaints  
of sexual abuse in the Anglican  
Diocese of Brisbane**

## **Report**

**The Complainant (Complainant)  
v.  
Ross McAuley Respondent**

### **Complaint No. 8**

1. This was a complaint identified in the Terms of Reference, and a number of steps were taken in dealing with this pursuant to the Terms of Reference. Professor Briggs conferred by telephone with the Complainant and there were other communications.
2. In December 2002 the Complainant, through his Solicitors, Shine Roach McGowan, issued proceedings under the Personal Injury Proceeding Act 2002. In those circumstances, because the matter involves the same issues as would have concerned the Board, had it enquired into the complaint, the Board has abstained from taking any further steps in relation thereto.

3. In so deciding, the Board relied upon *Watts v. Hawke* 1976 VR 707. In that case the Plaintiff Mr Watts was the subject of complaint by Mr Robert Hawke as to reportage of events which took place at a press conference at Mr Hawke's home. Mr Hawke complained to the Judiciary Committee of the Australian Journalists' Association.
4. Later the Plaintiff, issued a Writ claiming damages for defamation against Mr Hawke and David Syme & Co Limited. Notwithstanding, that the Writ had been issued the Judiciary Committee resolved to continue with the hearing of the complaint. The Plaintiff applied for an injunction to restrain the Committee from proceeding, and this came before His Honour Mr Justice Kaye, who inter alia stated:

*"The principles emerging from the reported cases lead me to the conclusion that a contempt of Court would be committed if a non curial Tribunal were to investigate and make findings on matters the same as those in issue in a pending civil action and if such investigations and findings would create a real and definite tendency to prejudice or to embarrass the fair trial of the action." (715)*

His Honour then considered the various ways in which it might be that the disciplinary committee would intrude upon issues which were to be decided by the Supreme Court, and granted an injunction restraining the Committee from proceeding.

4. *Watts* has been both applied and doubted in later decisions. However, the Board considers that it should apply the principles stated in *Watts*. Notwithstanding doubts about its correctness, which, with respect, the Board does not share, the Board considers it would be wrong to proceed to deal with this complaint, and does not do so.

5. For the same reason, it cannot enquire into or make any report in relation to the issue of the appointment in 1997 of the Reverend Ross McAuley (as he then was), to the CCSA.

Dated the twenty-second day of April, 2003

Peter O'Callaghan Q.C.  
Chairman

Professor Freda Briggs  
Member



# BOARD OF ENQUIRY

into past handling of Complaints  
of sexual abuse in the Anglican  
Diocese of Brisbane

## Report

Complainant  
v.  
Respondent

### Complaint No. 9

- 1.1 On 5 February 1997 the Complainant who is not identified, and nor is the Respondent wrote to Archbishop Hollingworth stating, inter alia:

***“Child abuse***

*The second issue which I wish to raise with you in this correspondence concerns the issue of the abuse of children by officers of the Church. I believe that an office bearer at St John’s Cathedral has a history of such behaviour, and given the access to children this post entails, it (is) extremely inappropriate for him to continue in this office (or any similar). It is my intention to enquire into with a view to criminal prosecution an event which occurred to me whilst involved with St John’s Cathedral and this person. I wish to spare my Church much of the trauma that can result from such action. I hope (to) achieve this before proceeding to the police to ascertain what action may be possible. My first and foremost concern is to prevent this person from submitting further young people to the deceptions I had to experience.*

*Unfortunately, I have been unable to gain satisfaction from bringing details of this matter to the attention of the Dean. My only support in the matter has been from my former school Head Master . . . to whom I am grateful. I would appreciate the opportunity to discuss this matter with you personally.”*

**5 March 1997**

1.2 Dr Hollingworth wrote to the Complainant, inter alia:

*“With regard to the second matter you raise, I have not responded to you immediately because I was awaiting a further discussion with the Dean who has been away on leave.*

*Without any reference to names of course, the Dean informs me that the “office bearer at St John’s Cathedral” holds no formal office other than a voluntary Sunday liturgical function as do many others. I’m not aware of any instances about the abuse of children by officers of our Church as you put the matter.*

*With regard to the particular person I think you are referring to, I have been informed by the Dean that your original complaint was carefully considered and that he spoke with your parents stating that they should take whatever steps they could to ensure you had no contact with the person concerned.*

*In the letter you make no reference to the nature of the offences that you wish to pursue with regard to criminal prosecution, and so I can make no comment, except to say that I am unaware of any. . .”*

1.3 On 4 September 1997 the Complainant wrote to the Archbishop

stating, inter alia:

*“My fear is that the seriousness of the conduct of this person has not been recognised, both in terms of its effect on his victims and the effects that revelations of this actions would have on our Church. . . .*

*In that his role is only “voluntary Sunday liturgical function” I would ask that his offer of service be refused until at least this matter can be resolved. . .*

*I am aware that this person has a “self declared” significant history of making close and inappropriate relationships with young boys. . .*

*It has taken me a number of years to recover personally from the incidents concerned and to feel able to deal with my experiences.*

*I look forward to your earliest reply and the opportunity to discuss these matters personally.”*

2.2 Dr Hollingworth's Solicitors responded to the draft preliminary findings as follows:

*"The Complainant was at no time prepared to name the person against whom his assertions were directed.*

*Dr Hollingworth discussed these matters with the Dean and formed a clear suspicion that the Complainant was in fact referring to a man who acted (in a voluntary capacity) at the Sunday morning services at Brisbane Cathedral. Dr Hollingworth had had no previous reason to entertain any concern about the conduct of this man. Because he could not be certain that this was in fact the man to whom The Complainant was referring and because this man occupied no position of pastoral trust within the Church, Dr Hollingworth considered that it was not appropriate for him to take any action in relation to this matter at that time.*

*The man's honorary position came to an end in 1998 and was not renewed, and thereafter he did not come to the Cathedral on a regular basis.*

*Dr Hollingworth notes that, in recent discussions, the Dean has advised Dr Hollingworth that the incident of child abuse of which the Complainant complained personally may possibly have occurred when, as a child in the late 1980s, the Complainant had accompanied this man on a holiday to Lismore of a private nature unrelated to the Church, even though his parents had been warned that such was inappropriate. Whether this is in fact the case is however a matter of which Dr Hollingworth cannot be sure."*

2.3 Dean Grimshaw was forwarded the above material, and wrote by referring first to what the Complainant wrote.

*"My first and foremost concern is to prevent this person from submitting further young people to the deceptions I had to experience."*

I am not aware of any detail of the alleged deceptions.

*"Unfortunately, I have been unable to gain satisfaction from bringing details of this matter to the attention of the Dean."*

*I do not understand this reference. I do not recall the Complainant ever having come to me to discuss details of his problems. I did learn (from whom I cannot now recall), - perhaps it was from the Complainant or from the Respondent, that he intended to go on a*

*holiday interstate with the Respondent (a member of the Cathedral congregation). I contacted the parents (whom I had known from a former parish) and suggested to them that they should not permit their son to go on the projected holiday – as I felt that the Respondent was not to be trusted in relationships with young people. The parent with whom I spoke felt that “the Complainant could look after himself”. I do not know whether the parent spoke with the Complainant about my call. I learned subsequently that the Complainant did go interstate with the Respondent. Perhaps ‘the matter’ relates to that holiday. Had it referred to an incident prior to this, I cannot imagine that he would have accepted the invitation to accompany the Respondent on the holiday.*

*While at the Cathedral I had an important and continuing concern to prevent any members of the congregation from forming inappropriate attachments especially to choristers, and on a number of occasions brought such matters to parents’ meetings. Because the Respondent was reputed to be litigious I mentioned no specific names but did indicate where possible dangers lay. Other members of staff were aware of my concerns, and were constantly vigilant in such matters.*

*The Complainant was not a chorister, but he did attend the Cathedral regularly for a time sitting alone in the south transept. I cannot recall dates in relation to these events, but I am sure the Complainant would know the date of his interstate excursion with the Respondent.*

*When asked about the matter by Archbishop Hollingworth, I could not refer to any specific incident except my warning to the parents not to allow the Complainant to go on the interstate trip with the person concerned. The Respondent often discussed with me details of his testamentary intentions, and I felt these were being used in a manipulative way to secure emotional dependence on the Respondent from people who were entering secondary and tertiary studies. His alleged promised bequests seemed to have no substance but they may have been used as a “bait”.*

*The appointment of the Respondent to liturgical duties enabled me to keep a closer eye on his associations with other members of the congregation, to prevent potential abuse of contacts. The Respondent transferred his attentions to “helping” South East Asian students in their studies, but I have no knowledge of whether anything actually transpired in this regard.”*

3.1 The Complainant responded to the above matters as follows:

*"I refer to your previous correspondences providing details pertaining the to the Board of Enquiry into past handling of Complaints of sexual abuse in the Anglican Diocese of Brisbane.*

*I apologise for the delay in responding to your correspondence, however, the quest to provide accurate recollections has forced the delving into memories that are not easy to confront all over again - meaning that time has had to be taken to ensure the healing process is not unduly unravelled.*

*I note that I have previously accepted and returned the Anglican Diocese of Brisbane's offer of indemnity with regard to the information to be supplied by me. I also feel a need to say that this response has been provided without the assistance of lawyers etc, and as such may not be as structured as some responses - should there be any areas where my expression may need to be clarified, please contact me. I have earnestly tried to provide my honest recollections and contemplations as a contribution the Enquiry's mission in assisting the development of a better system for the future.*

*Introductory Comments*

*From my experiences it is my observation that there has been a historical, organisation-wide, systemic failure to provide a process and environment by which person's such as myself could:*

- raise matters of concern in an environment that supports the victim; and,*
- receive acknowledgment of the depth of pain, confusion and suffering caused by such abuse from informed leadership and caring systems.*

*It is to this end that I wish to direct my observations - that the perspective and understanding of the officials with whom I had dealt in relation to my experiences were severely limited or misinformed by their historical personal and organisational experiences. I believe the best outcome of this Enquiry process for me would be the rapid implementation of a new, valid response process for dealing with such matters.*

*However, to ensure that a full and complete picture of the matters involving myself, as I honestly recollect them, are before the Board I believe that the following response to both Dr Hollingworth and (former) Dean Grimshaw is required. I have tried to remain focussed on matters which address the formulation of a better, more supportive process of dealing with matters in the future, rather than the specifics of my experience except where errors have occurred.*

### ***Dr Hollingworth's Recollections***

*I accept Ms Jackie KEARNEY's advice that my meeting with Dr Hollingworth was October 28<sup>th</sup> 1998 and agree that the difference in recollections regarding the date is insignificant.*

*I believe that Dr Hollingworth is mistaken in his recollection that I was "at no time prepared to name the person against whom (my) assertions were directed".*

*It is true that I did not name the individual concerned in my written correspondence, but was primarily because I had previously named this person to Dean Grimshaw and felt that a less formal and accusatorial process could be better for myself to cope with. I accept that, in hindsight, my assumption that the Dean and Dr Hollingworth would have pursued this matter within the organisation and exchanged this information (prompted by my correspondence) was not well founded. This is supported in Dr Hollingworth's noting that it was only during recent discussions that he has discussed the matter with the Dean. Consequently it is could be valid that Dr Hollingworth was not substantively aware of the identity of this person prior to our formal meeting in 1998.*

*My recollection is that, during the formal meeting, it appeared to me that it was mutually understood to whom I was referring. I think it is important to state that at no time was I asked or encouraged to name the person concerned and feel that the assertion of Dr Hollingworth is unfair in this regard. It must be remembered that, even at the time of the meeting in 1998, I was still a relatively young person dealing with an extraordinary event that had taken many years to build the confidence to confront. Bringing this matter to the attention of the Archbishop of the Diocese was a very difficult thing for me, especially when there was no guiding, supportive process to assist.*

*My recollection is that at the formal meeting with Dr Hollingworth that I was informed that the individual was no longer involved in his "honorary position" and had not been active for some time. However, his statement conveys that this person was still acknowledged in the role until the end of 1998 - I am disappointed that this could be the case.*

*From the formal meeting I do not recollect any discussion outcome regarding what could be done about the situation of this person's proximity to young people, apart from litigation on my part (my choice to pursue) or (I'm am unsure of the exact words) hoping that he will not return. I did not leave with any information regarding a process (if any existed?) through which I could address my concerns or receive assistance with my healing process.*

*In further relation to Dr Hollingworth's notations regarding more recent discussions with the Dean regarding the incidents of my experience, I wish to record the following. The holiday was indeed undertaken outside the jurisdiction of the Church, however, the "trust" relationship was developed due to this person's direct involvement and apparent acceptance in the role of verger at the Cathedral. I still struggle with the definition of office bearer provided to me (in correspondence from Dr Hollingworth) in relation to this matter. It appeared to me (and this is just my grasp of the responses received) that, as this person held no paid or*

*elected role, that the organisation had no concern for his doings. His role brought him into close quarters with young males and his acceptance in this role and involvement in official activities lent a certain credibility that was certainly undeserved. It also seemed implied that I, as a sixteen year old, should have been able to ascertain this on my own - unfortunately my knowledge and awareness of this person's character had to come via a series of unpleasant events. I observe that it is highly inappropriate for such expectations to be placed on a child.*

*I also need to state that at no time was I offered any support or assistance to deal with my experiences, nor was I directed to or aware of any formal process through which I could raise such matters. I was required to make assumptions and forays that were personally very difficult, especially given my long association with the Church. Previously experiences had suggested that the discussion of these matters in the Church were unwelcome (not related to Dr Hollingworth or Dean Grimshaw) and I sort to find an honourable way to bring them to the Church's attention.*

## **Dean Grimshaw's Recollections**

*There appears to be some inconsistencies between the statements of Dean Grimshaw and my recollections. The Dean seems to have some confusion between myself and my father, to the extent where I am referred to by my fathers name, however, this does not seem to have impacted the substance of the information provided.*

*In relation to my "bringing details of this matter to the attention of the Dean", the Dean states that he does not recall a meeting. However, I certainly recollect a meeting with the Dean in his office in St Martin's house where I discussed my concerns. I am uncertain of the time and date of this meeting and, as it was not appointment based, there may be no record should it not be recorded in the Dean's diary of the time. At best I remember that it was around midday and could have been as early as 1993.*

*At the time of this meeting I thanked him for his advice to my parents, which, when conveyed to me, led to my awareness that prevented the actions of this individual from descending any further than had occurred. However, at our meeting he denied any recollection of providing such advice to my parents. Imagine my surprise when reading of his response to the Board that this had in fact taken place!*

*The "matter" does not solely refer to the "holiday" but a series of events up to and including a trip to northern NSW with the individual in question. It is my understanding that the advice to my parents was only provided around the time of the "holiday" and this appears confirmed in the Dean's recollections. It would have been much more useful to me personally if the meeting had been prevented in the first place, or at least been provided at the time of the first (or any subsequent) meeting (see below). The way in which my family has dealt with the matter is a subject that is not relevant to the Enquiry, save to reflect that:*

- *a trust was put on this individual based upon his acceptance in the Cathedral congregation, until the time of the Dean's comments; and,*
- *no support was provided or known of to work through the needs of all relationships affected.*

*For the record I wish to confirm that the Dean's suspicions regarding this individual's intent with regard to using testamentary promises as "bait" and building emotional dependence for manipulation. It is a shame that the "caring" choice following the refocussing of this person's intentions away from the Church appears to be a sigh of relief, rather than a concern for the South East Asian student he was to subject to "helping". I can also confirm the Dean's recollection of this person's bullying and threatening behaviour, especially litigation. However, I feel that the fear/non-confrontational weight placed on this in the dealing process led to at least one highly undesired outcome - my experience. It supported and strengthened the bully where a confrontation would have seen matters addressed - a benefit for young people and also the perpetrator.*

*At no time did I "attend the Cathedral regularly for a time, sitting alone in the South Transept". Perhaps this might be one area that the Dean's confusion of myself with my father? I did visit the Cathedral on a few separate occasions during my time as a boarder at Churchie. It was around the time of the "holiday" that I might have once attended services two Sundays in a row - but certainly not regularly.*

*I comment that the Dean's decision to appoint this person to "liturgical duties" was well intentioned but the primary reason for my initial contact with this person (at a School-based function - I think it was founder's day) was his access to young people in his role. However, there is no question of me apportioning blame for what transpired to the Dean - I believe that he probably did his best in an organisational environment that did not provide structured support.*

*With the benefit of hindsight, I would hope that such a person would have offers of service instantly refused and for this (with offers of counselling etc) to be seen as an appropriate ministry response to caring for these types of individuals, and to protecting the victims they prey upon.*

## **Other Matters**

*Your most recent correspondence reminded me of a meeting I had with my former Headmaster at Churchie, Mr Christopher ELLIS. Following my disappointment at the concern being showed at the Diocesan level regarding my concerns and my awareness that the individual concerned was still being utilised in his "liturgical role", I advised Mr Ellis of basic details of what had transpired during my experience. I recall that this meeting must have occurred early in 1996, as it was at this meeting that I also advised him of my intention to be married (which occurred 8<sup>th</sup> June 1996). During this meeting we discussed the need to be vigilant in this*



*matters and I was thanked for bringing my concerns to him. I wish to record that the support of Mr Ellis was important and much appreciated. I apologise for the late notification of this recollection, but it has been part of my own "discovery" process.*

*If there is a need for the disclosure by me of the identity of the individual concerned then I would be prepared to consider it. Should there also be a need to detail the nature of the "matter" then I would consider this request also. However, as stated earlier, in wishing to remain focussed on the development of the "new ways" I would need to be assured of the revelations strong link to that outcome.*

*My experiences suggested to me that a lack of trust in my communications of events existed across the organisational level. I am unaware of any personal reasons for this and can only assume that a more general mistrust of abuse victims or fear of litigation was the motive for this type of response. I genuinely hope that the new response values the victim and provides support for them to resolve the issues before them in ways appropriate to each person as they have need. I would also suggest that a framework for caring for the perpetrators needs to be developed which takes a whole-of-person approach, rather than an organisational risk management or secretive approach - an open, timely, transparent, honest and caring system is required. It also needs to significantly better support the decision-makers and officials as a priority with education, understanding, structure and authority to ensure quality, informed care is provided to whomever needs to confront such matters into the future. I do earnestly pray that there will be no need to use the new system, but know that this, unfortunately, is very optimistic.*

### **Conclusion**

*Should you require any further information or detail regarding this response to the Enquiry, please contact me at your convenience, per the details in the letterhead."*

- 3.2 It appears that the incident or experience which occurred outside the Church but as the Complainant says arose from his association with the Respondent at the church. However, neither in his communications with the Dean or Dr Hollingworth, or indeed with the Board, has the Complainant particularised an act of sexual abuse.

- 3.3 Because of the uncertain presentation of what may have been a complaint, the Board cannot say that there was any unfair, unreasonable, or inappropriate handling of whatever the matter was, which the Complainant raised. The Board can only look at what occurred in the past, and doing that, it follows nothing further needs to be said.
- 3.4 However, in view of the Complainant's comments as to his preparedness to name the relevant person, and to detail the nature of the "matter" the Board points out that in 1997, the CCSA handled complaints of sexual abuse and in December 1997, a Protocol was enacted which continued to allow complaints to be brought against persons who were "voluntary workers of the Church". If the Complainant had been the victim of sexual abuse by a voluntary worker, he could have then under the then protocol as he could now bring a complaint under the current protocol.
- 3.5 Whilst the Board does not consider that the complaint as it was made to the Dean and to Dr Hollingworth was not handled appropriately, the following is pointed out:
- (i) The Dean was able to take steps which the Board gathers, prevented problems arising. The essential complaint of the Complainant appears to be not so much concerned with what or might have happened to him, but what might have happened to other persons in the proximity of the Respondent. There does not appear to be any evidence of any specific offence committed by the Respondent. If there

were, and a Complainant wanted to take action in respect of it, the protocols in place now, and previously, would permit this to be done. Because the protocol provides that a person against whom the complaint could be made included “otherwise a voluntary worker of the Church in this diocese” the Respondent would meet that description.

Dated the twenty-second day of April, 2003

Peter O’Callaghan Q.C.  
Chairman

Professor Freda Briggs  
Member